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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0207]

Safety Zones; Fireworks and Swim Events in Captain of the Port New York Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones within the Captain of the Port New York Zone on the specified dates and times. This action is necessary to ensure the safety of vessels, participants and spectators from hazards associated with fireworks displays and swim events. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port (COTP).

DATES: The regulation for the safety zones described in 33 CFR 165.160 will be enforced on the dates and times listed in the table below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer First Class Ronald Sampert U.S. Coast Guard; telephone 718–354–4197, email *ronald.j.sampert@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.160 on the specified dates and times as indicated in Tables 1 and 2 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

1. Schnider Party, Poughkeepsie, NY, Hudson River Safety Zone, 33 CFR 165.160(5.13).	• Launch site: A barge located in approximate position 41°42′24.50″ N. 073°56′44.16″ W. (NAD 1983), approximately 420 yards north of the Mid Hudson Bridge. This Safety Zone is a 300-yard radius from the barge. • Date: March 25, 2016. • Time: 8:30 p.m.–10:20 p.m.
2. The Battery, The Battery, Hudson River Safety Zone, 33 CFR 165.160(5.2).	• Launch site: A barge located in approximate position 40°42′00″ N. 074°01′17″ W. (NAD 1983) approximately 500 yards south of The Battery, Manhattan, New York. This Safety Zone is a 360-yard radius from the barge. • Date: April 18, 2016. • Time: 8:45 p.m.–10:00 p.m.
3. N.E.C.O. Awards, Liberty Island Safety Zone, 33 CFR 165.160(2.1)	• Launch site: A barge located in approximate position 40°41′16.5″ N. 074°02′23″ W. (NAD 1983) located in Federal Anchorage 20–C, about 360 yards east of Liberty Island. This Safety Zone is a 360-yard radius from the barge. • Date: May 7, 2016. • Time: 11:00 p.m.–12:10 a.m.
4. Town of North Hempstead Summer Kick Off, Bar Beach, Hempstead Harbor Safety Zone, 33 CFR 165.160(3.9).	• Launch site: A barge located in approximate position 40°49′50″ N. 073°39′12″ W. (NAD 1983), approximately 190 yards north of Bar Beach, Hempstead Harbor, New York. This Safety Zone is a 180-yard radius from the barge. • Date: May 28, 2016. • Time: 9:00 p.m.–10:30 p.m.

TABLE 2

1. Swim Across America Swim Event, 33 CFR 165.160(3.0) Date: July 30, 2016.	• Location: Participants will swim between Glen Cove and Larchmont, New York and an area of Hempstead Harbor between Glen Cove and the vicinity of Umbrella Point. This Safety Zone includes all waters within a 100-yard radius of each participating swimmer. • Date: July 30, 2016. • Time: 5:30 a.m.–12:00 p.m.
2. Newburgh Beacon Swim, Swim Event, 33 CFR 165.160(1.2) Date: August 6, 2016.	• Location: Participants will cross the Hudson River between Newburgh and Beacon, New York approximately 1300 yards south of the Newburgh-Beacon Bridges. This Safety Zone includes all waters within a 100-yard radius of each participating swimmer.

TABLE 2—Continued

	• Date: August 6, 2016. • Time: 09:15 a.m.–1:15 p.m.

Under the provisions of 33 CFR 165.160, vessels may not enter the safety zones unless given permission from the COTP or a designated representative. Spectator vessels may transit outside the safety zones but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that a safety zone need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the safety zone.

Dated: March 18, 2016.

M.H. Day,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2016–09024 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0237]

RIN 1625–AA11

Regulated Navigation Area; Columbia River, Kalama, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) covering the waters of the Columbia River between river miles 71 and 73, in the vicinity of the mouth of the Kalama River. This action is necessary to provide for the safety of the persons and vessels conducting salvage operations on the subject waters at the Port of Kalama in Kalama, WA. Specifically, this regulation implements a no-wake requirement for vessels operating in the RNA during those salvage operations.

DATES: This rule is effective without actual notice from April 19, 2016 through April 30, 2016. For the purposes of enforcement, actual notice will be used from April 7, 2016 through April 19, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0237 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Kenneth Lawrenson, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503–240–9319, email *msupdxwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable since the salvage operations are on-going and delaying promulgation of the regulation could result in injury or damage to the persons and vessels conducting those operations.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date until 30 days after publication would be impracticable since the salvage operations are on-going and delaying promulgation of the regulation could result in injury or damage to the persons and vessels conducting those operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Columbia River (COTP) has determined that the wake created by vessels transiting the waters of the Columbia River, between river miles 71 and 73, creates a safety hazard for the persons, including divers, and vessels engaged in salvage operations involving the M/V SPARNA at the Port of Kalama in Kalama, WA. As such, this rule is necessary to ensure the safety of those persons, including divers, and vessels.

IV. Discussion of the Rule

The on-going salvage operations at the Port of Kalama, in Kalama, WA, involve underwater dive operations with support vessels. These operations are, by their nature, hazardous and sensitive to water movement. Wakes from passing vessels could pose significant risks of injury or death to the involved personnel and risks of damage to involved vessels. In order to mitigate the safety risks vessel wakes pose to these operations, it is necessary to control vessel movement through the area. The purpose of this regulation is to ensure the safety of waterway users for the duration of this salvage operation. In order to minimize such unexpected or uncontrolled movement of water, the RNA requires all vessels transiting this area to operate in such a manner as to create no wake. The RNA will encompass all waters of the Columbia River between river miles 71 and 73.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the limited size, location, duration of the RNA. In addition, vessel traffic will be able to transit through this RNA at any time.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the temporary establishment of an RNA to deal with an emergency situation for one week or longer in duration. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–0237 to read as follows:

§ 165.T13–0237 Regulated Navigation Area; Columbia River, Kalama, WA.

(a) *Location.* The following area is a Regulated Navigation Area (RNA): All waters of the Columbia River between river miles 71 and 73.

(b) *Regulations.* All vessels operating within the RNA created in paragraph (a) must proceed with caution and operate in such a manner as to produce no wake.

(c) *Enforcement period.* The RNA created in paragraph (a) is effective from April 7, 2016 through April 30, 2016. The Captain of the Port, Columbia River will provide any updates regarding the enforcement period of the RNA via Broadcast Notice to Mariners, Local Notice to Mariners, Marine Safety Information Bulletins, and/or other appropriate means.

(d) *Contact information.* For questions regarding this RNA and/or to report violations contact U.S. Coast Guard

Sector Columbia River at 503–861–6211 or via VHF-Channel 16.

Dated: April 6, 2016.

D.L. Cottrell,

Captain, U.S. Coast Guard, Acting Commander, Thirteenth Coast Guard District.

[FR Doc. 2016–09027 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0180; FRL–9943–85]

Cyprodinil; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of cyprodinil in or on Nut, Tree, Crop Group 14–12; except almond and pistachio. Syngenta Crop Protection, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 19, 2016. Objections and requests for hearings must be received on or before June 20, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0180, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Lewis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0180 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 20, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0180, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of April 22, 2015 (80 FR 22466) (FRL–9925–79), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F8333) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.532 be amended by establishing tolerances for residues of the fungicide cyprodinil, 4-cyclopropyl-6-methyl-N-phenyl-2-pyrimidinamine, in or on Nut, Tree, Crop Group 14–12; except almond and pistachio at 0.04 parts per million (ppm). That document referenced a summary of the petition prepared by Syngenta Crop Group, LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for cyprodinil including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with cyprodinil follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The major target organs of cyprodinil are the liver and the kidney. Liver effects were consistent among male and female rats and mice in both sub-chronic and chronic studies and typically included increased liver weights along with increases in serum clinical chemistry parameters associated with adverse effects on liver function (*i.e.*, increased cholesterol and phospholipid levels). Microscopic lesions in rats and mice included hepatocyte hypertrophy and hepatocellular necrosis. In the kidneys, adverse effects were seen as chronic tubular lesions and chronic kidney inflammation following sub-chronic exposure of male rats. Chronically, cyprodinil caused increased kidney weights and progressive nephropathy in male rats. Chronic effects in dogs were limited to decreased body-weight gain, decreased food consumption and decreased food efficiency; liver toxicity was not seen in the dog. The hematopoietic system also appeared to be a target of cyprodinil as mild anemia was seen in rats exposed sub-chronically (reductions in hematocrit and hemoglobin and microcytosis). Although increases in thyroid weight and/or hypertrophy of thyroid follicular cells were observed at higher doses in the rat 28-day oral-toxicity studies and in the 90-day oral-toxicity study in rats, treatment related changes in thyroid weights or gross/microscopic observations were not observed in the chronic rat study or in other studies.

A 28-day dietary immunotoxicity study in mice resulted in no apparent suppression of the humoral component of the immune system. The only effect attributed to cyprodinil treatment was higher mean absolute, relative (to body weight), and adjusted liver weights for the 5000 ppm group. There were no treatment-related effects on absolute, adjusted, or relative spleen or thymus weights; no effects on specific activity or total activity of splenic Immunoglobulin M antibody-forming cells to the T cell-dependent red blood cell antigens. No dermal or systemic toxicity was seen following repeated dermal application at the highest dose in a 21-day dermal toxicity study in rabbits.

An acute neurotoxicity study indicated systemic toxicity with signs of induced hunched posture, piloerection, and reduced responsiveness to sensory stimuli and reduced motor activity. Females were slightly more affected than males per daily clinical observations, which disappeared by day 3 to 4. A dose-related reduction in body temperature was seen in all treated animals, thus hypothermia is considered a compound-related effect in the highest dose tested and was found to be statistically significant, whereas the lower dosed animals was not or only marginally significant and was fully reversible in all groups. Clinical signs, hypothermia, and changes in motor activity were found to all be reversible by day 8 and 15 investigations. There were no histopathological findings to support evidence of damage to the central nervous system, eyes, optic nerves, or skeletal muscles. A sub-chronic neurotoxicity study showed no treatment related effects on mortality, clinical signs, or gross or histological neuropathology. Functional observational battery and motor activity testing revealed no treatment related effects up to the highest dose tested.

There was no evidence of increased susceptibility in the developmental rat or rabbit study following *in utero* exposure or in the two-generation reproduction study following pre- and post-natal exposure. Fetal toxicity, manifested as significantly lower fetal weights and an increased incidence of delayed ossification in the rat and a slight increase in litters showing extra ribs (13th) in the rabbit, was reported in developmental toxicity studies. In a rat two-generation reproduction study, significantly lower pup weights for F_1 and F_2 offspring were observed. However, each of these fetal/neonatal effects occurred at the same dose levels at which maternal toxicity (decreased body weight gain) was observed and were considered to be secondary to maternal toxicity.

Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to the carcinogenic potential, cyprodinil was classified as ''not likely to be carcinogenic to humans.''

Specific information on the studies received and the nature of the adverse effects caused by cyprodinil as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document, ''Human Health Risk Assessment for the Petition Proposing a New Tolerance for the Use of cyprodinil in/on Nut, Tree, Crop Group 14–12; except almond and pistachio'' in docket ID number EPA–HQ–OPP–2015–0180.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for cyprodinil used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of October 16, 2012 (77 FR 49732) (FRL–9359–7).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to cyprodinil, EPA considered exposure under the petitioned-for

tolerances as well as all existing cyprodinil tolerances in 40 CFR 180.532. EPA assessed dietary exposures from cyprodinil in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for cyprodinil. EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). This dietary survey was conducted from 2003 to 2008. As to residue levels in food, EPA utilized the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database DEEM–FCID, Version 3.16 default processing factors and tolerance-level residues and 100 percent crop treated (PCT) for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used food consumption information from the USDA NHANES/WWEIA dietary survey conducted from 2003 to 2008. As to residue levels in food, EPA utilized residue data from field trials to obtain average residues and assumed 100 PCT. Empirically derived processing factors were used in these assessments when available; all other processing factors used the DEEM–FCID Version 7.81 default processing factors.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that cyprodinil does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk was not conducted.

iv. *Anticipated residue information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for cyprodinil and CGA 249287 in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of cyprodinil and CGA 249287. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), Screening Concentration in Ground Water (SCI–GROW) models and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of cyprodinil and CGA 249287 for acute exposures are estimated to be 34.8 parts per billion (ppb) for surface water and 2.05 ppb for ground water. EDWCs for chronic exposures for non-cancer assessments are estimated to be 24.7 ppb for surface water and 1.80 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 34.8 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 24.7 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Cyprodinil is currently registered for the following uses that could result in residential exposures: Ornamental plants. EPA assessed residential exposure using the following assumptions: Only short-term inhalation exposures to adult residential handlers from application to ornamental plants. Though there may be short-term dermal exposures to handlers, this was not assessed since no dermal endpoint was identified. Post-application exposures to adults and children are not expected. Intermediate or chronic exposures are not expected. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found cyprodinil to share a common mechanism of toxicity with any other substances, and cyprodinil does not appear to produce a toxic metabolite engendered by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cyprodinil does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In a rat developmental toxicity study, there were significantly lower mean fetal weights in the high-dose group compared to controls as well as a significant increase in skeletal anomalies in the high-dose group due to abnormal ossification. The skeletal anomalies/variations were considered to be a transient developmental delay that occurs secondary to the maternal toxicity noted in the high-dose group. In the rabbit study, the only treatment related developmental effect was indication of an increased incidence of a 13th rib at maternally toxic doses.

Signs of fetal effects in the reproductive toxicity study included significantly lower F_1 and F_2 pup weights in the high-dose group during lactation, which continued to be lower than controls post-weaning and after the pre-mating period in the F_1 generation only. Reproductive effects were seen only at doses that also caused parental toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for non-inhalation routes of exposure and retained at 10X for inhalation exposure scenarios for all population groups. That decision is based on the following findings:

i. The toxicity database for cyprodinil is complete, except for a 90-day inhalation toxicity study required to reduce uncertainty associated with the use of an oral POD for assessing risk via the inhalation route. In the absence of a route-specific inhalation study, a 10x FQPA SF factor for residential scenarios will be retained for risk assessments involving inhalation exposure.

ii. As indicated by an acute neurotoxicity study in mice, clinical signs, hypothermia, and changes in motor activity were all found to be reversible and no longer seen at day 8 and 15 investigations. There were no treatment related effects on mortality, gross or histological neuropathology. Reduced motor activity, induced hunched posture, piloerection and reduced responsiveness to sensory stimuli were observed and disappeared in all animals by day 3 to 4. In a sub-chronic neurotoxicity study in rats, there were no treatment related effects on mortality, clinical signs, or gross or histological neuropathology. No clinical signs suggestive of neurobehavioral alterations or evidence of neuropathological effects were observed in the available oral-toxicity studies. Based on this evidence, there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. In the prenatal developmental rat and rabbit studies and in the 2-generation reproduction rat study, toxicity to the fetuses/offspring, when observed, occurred at the same doses at which effects were observed in maternal/parental animals. All of these fetal effects were considered to be secondary to maternal toxicity. There is no evidence that cyprodinil results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary assessment was conservative and based on 100 PCT and tolerance level residues as well as DEEM default and empirical processing factors. The chronic dietary assessment was partially refined with average field trial residues for some commodities and tolerance-level residues for the remaining commodities. DEEM default and empirical processing factors were also incorporated into the chronic dietary assessment. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyprodinil in drinking water. Based on the discussion in Unit III.C.3, post-application exposure to children as well as incidental oral exposure to toddlers is not expected. These assessments will not underestimate the exposure and risks posed by cyprodinil.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to cyprodinil will occupy 8.6% of the aPAD for children one to two years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyprodinil from food and water will utilize 85% of the cPAD for children one to two years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of cyprodinil is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyprodinil is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to cyprodinil. Using the exposure assumptions described in this unit for short term exposures, EPA has estimated short-term food, water and residential exposures. For adults, oral dietary and inhalation estimates were combined using the total aggregate risk index (ARI) methodology since the levels of concern (LOC) for oral and dietary exposure (LOC=100) and inhalation (LOC 1,000) are different. The short-term ARI for adults is 70 which is greater than 1 and is therefore, not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, cyprodinil is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for cyprodinil.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, cyprodinil is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyprodinil residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate HPLC/UV methods (AG–631 and AG–631B) are available for enforcing tolerances of cyprodinil on plant commodities.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905;

email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established an MRL for cyprodinil in/on tree nut commodities other than pistachio and almond.

V. Conclusion

Therefore, tolerances are established for residues of cyprodinil, in or on Nut, Tree Crop Group 14–12; except almond and pistachio at 0.04 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 7, 2016.

Daniel J. Rosenblatt,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.532, add alphabetically the commodity "Nut, tree, group 14–12; except almond and pistachio" to the table in paragraph (a), to read as follows:

§ 180.532 Cyprodinil; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
* * * * * * *	
Nut, tree, group 14–12; except almond and pistachio	0.04
* * * * * * *	

* * * * *

[FR Doc. 2016–09028 Filed 4–18–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150105004–5355–01]

RIN 0648–XE569

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Adjustment for the Common Pool Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment.

SUMMARY: This action increases the trip limit for Gulf of Maine cod, Gulf of Maine haddock, and Southern New England/Mid-Atlantic yellowtail flounder for Northeast multispecies common pool vessels for the remainder of the 2015 fishing year. The regulations authorize the Regional Administrator to adjust the trip limits for common pool vessels in order to facilitate harvest of, or prevent exceeding, the pertinent common pool quotas during the fishing year. Increasing these trip limits is intended to provide additional fishing opportunities and help allow the common pool fishery to catch its allowable quota for this stock.

DATES: The trip limit increase is effective April 14, 2016, through April 30, 2016.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Supervisory Fishery Policy Analyst, 978–281–9257.

SUPPLEMENTARY INFORMATION: The regulations at § 648.86(o) authorize the Regional Administrator (RA) to adjust the possession limits for common pool vessels in order to prevent the overharvest or underharvest of the common pool quotas. As of April 5, 2016, the common pool had caught approximately 61 percent of its annual quota of Gulf of Maine (GOM) cod, 11 percent of its GOM haddock quota, and 88 percent of its Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder quota. To allow the common pool fishery to catch more of its quota for these stocks, effective April 14, 2016, the trip limits for GOM cod, GOM haddock, and SNE/MA yellowtail flounder for all common pool vessels are increased as summarized in Table 1. These changes are intended to provide additional fishing opportunities for common pool vessels.

TABLE 1—FISHING YEAR 2015 COMMON POOL TRIP LIMIT INCREASES

Stock	Current possession/trip limit	New possession/trip limit
GOM Cod	25 lb (11.3 kg) per trip	100 lb (45.4 kg) per trip.
GOM Haddock	50 lb (22.7 kg) per DAS up to 200 lb (90.7 kg) per trip.	500 lb (226.8 kg) per DAS up to 1,000 lb (453.6 kg) per trip.
SNE/MA Yellowtail Flounder	50 lb (22.7 kg) per trip	500 lb (226.8 kg) per DAS up to 1,000 lb (453.6 kg) per trip.

Weekly quota monitoring reports for the common pool fishery can be found on our Web site at: *http://www.greateratlantic.fisheries.noaa.gov/ro/fso/MultiMonReports.htm.* We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, vessel monitoring system catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

The regulations at § 648.86(o) authorize the RA to adjust the Northeast multispecies possession and trip limits for common pool vessels in order to prevent the overharvest or underharvest of the pertinent common pool sub-ACLs. The catch data used to justify increasing the possession and trip limit for GOM cod, GOM haddock, and SNE/MA yellowtail flounder only recently became available. The possession and trip limit increase implemented through this action allows for increased harvest of these stocks, to help ensure that the fishery may achieve optimum yield. As a result, the time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent us from increasing the possession and trip limit for these stocks before the end of the fishing year on April 30, 2016, which would prevent the additional fishing opportunities this action is intended to provide. This would undermine management objectives of the Northeast Multispecies Fishery Management Plan and cause unnecessary negative economic impacts to the common pool fishery. There is additional good cause to waive the delayed effective period because this action relieves restrictions on fishing vessels by increasing a trip limit.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 14, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–09016 Filed 4–14–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 75
Tuesday, April 19, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 710

[Docket No. DOE–HQ–2012–0001–0274]

RIN 1992–AA36

Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) proposes to amend its regulations which set forth the policies and procedures for resolving questions concerning eligibility for DOE access authorization. The proposed revisions would update and provide added clarity throughout the current rule, and streamline the process for resolving access authorization eligibility determinations. Additionally, DOE proposes to update references to DOE Offices and officials to reflect the current DOE organizational structure.

DATES: Written comments on this proposed rulemaking must be received on or before close of business May 19, 2016.

ADDRESSES: You may submit comments, identified by "Determining Eligibility for Access and RIN 1992–AA36," by any of the following methods (comments by email are encouraged):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email to: OfficeofDepartmentalPersonnelSecurity@hq.doe.gov.* Include Determining Eligibility for Access and RIN 1992–AA36 in the subject line of the message.
- *Mail to:* U.S. Department of Energy, Office of Departmental Personnel Security, AU–53, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mark R. Pekrul, Office of Departmental Personnel Security, (202) 586–4097, *mark.pekrul@hq.doe.gov;* or Christina Pak, Office of the General Counsel, (202) 586–4114, *christina.pak@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Section-by-Section Analysis
III. Procedural Analysis
  A. Review Under Executive Order 12866 and 13563
  B. Review Under Executive Order 12988
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  E. Review Under the National Environmental Policy Act
  F. Review Under Executive Order 13132
  G. Review Under the Unfunded Mandates Reform Act of 1995
  H. Review Under the Treasury and General Government Appropriations Act, 1999
  I. Review Under Executive Order 13211
  J. Review Under the Treasury and General Government Appropriations Act, 2001
  K. Approval by the Office of the Secretary of Energy

I. Background

The Department of Energy is publishing this notice of proposed rulemaking (NOPR) in order to update and clarify DOE's policies and procedures for the denial and revocation of access authorizations.

10 CFR part 710 has not been substantively updated since 2001 (66 FR 47062, Sept. 11, 2001). Since that time, as the Department has gained operational experience under the current rule, revisions to update and clarify provisions in the rule are appropriate. The proposed rule would: (1) Accord primacy to the national Adjudicative Standards when determining eligibility for access authorization; (2) clarify that DOE can, in exigent circumstances, suspend an access authorization without recourse to certain administrative procedures; (3) permit individuals subject to criminal proceedings to suspend access authorization revocation proceedings under this part, subject to certain conditions; (4) limit the ability of the Appeal Panel to consider new evidence on appeal of a decision by the Department's Office of Hearings and Appeals or the Manager to deny or revoke access authorization; (5) introduce a one-year waiting period before an individual, previously the subject of denial or revocation of access authorization, may be reconsidered for access authorization; (6) add to part 710 the requirements of Presidential Policy Directive 19, which provides appeal rights to the Department's Office of Inspector General under certain circumstances; (7) revise, delete, and add definitions for certain terms used in the regulation; and (8) update references to DOE Offices and officials to reflect the current DOE organizational structure.

Laws, regulations and directives which may apply to part 710 include, but are not limited to: The Atomic Energy Act of 1954; Executive Order 13467 (73 FR 38103, June 30, 2008; Executive Order 12968 (60 FR 40245, August 2, 1995, as amended); Executive Order 13526 (75 FR 707, January 5, 2010); Executive Order 10865 (25 FR 1583, February 24, 1960, as amended); Executive Order 10450 (18 FR 2489, April 27, 1954, as amended); Presidential Policy Directive 19 (October 10, 2012).

II. Section-by-Section Analysis

DOE proposes to amend 10 CFR part 710 as follows:

The title of this part would be revised to delete the words "CRITERIA AND" to reflect the proposed deletion of the criteria in current § 710.8, and because the term "Procedures" adequately describes the content of the rule. Additionally, the heading, Subpart A, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material," is proposed to be deleted. Previously, the entire body of this rule was denominated as Subpart A to Part 710. In this proposed revision, each existing undesignated subpart heading would be designated as an individual subpart, in accordance with the U.S. Government Printing Office's Document Drafting Handbook.

1. The current heading "GENERAL PROVISIONS" located above current § 710.1 would be revised to add "SUBPART A—" at the beginning.

2. Proposed § 710.1 "Purpose" would delete references to the specific types of individuals to which this part applies since this information is set forth in § 710.2; and would update the applicable legal authorities.

3. Proposed § 710.2 "Scope" would clarify that determining eligibility for an individual's access authorization would require application of the national Adjudicative Guidelines, and reference to "criteria" would be deleted.

4. Proposed § 710.3 "Reference" would delete the reference to the Atomic Energy Act and replace it with

a reference to the Adjudicative Guidelines.

5. Proposed § 710.4 "Policy" would replace the phrase "criteria for determining eligibility for access authorization and" with "procedures" in paragraph (a) to reflect the proposed deletion of the criteria in current § 710.8. Current § 710.4(c) would be renumbered § 710.32(b)(1). Current § 710.4(d) would be renumbered § 710.32(b)(2). Current paragraphs (e) and (f) would be deleted since the situations addressed in those paragraphs are already covered in the current rule. Current paragraph (g) would be renumbered § 710.32(c).

6. In proposed § 710.5 "Definitions" a number of new or revised definitions are proposed. In addition, the terms contained in this section would be re-ordered so that they are listed in alphabetical order; current § 710.5(b) would be deleted as unnecessary.

The term "DOE Counsel" would be amended to delete the requirement that such an individual be subject to a favorably adjudicated background investigation. Instead, the requirement that such an individual must hold a DOE Q access authorization, the grant of which is predicated on a favorably adjudicated background investigation, would be added.

The term "Administrative Judge" is proposed to be amended in the same fashion and for the same reasons as the definition of "DOE Counsel," and also to delete the requirement that this person be a "senior management official."

The term "Director" would be added and defined as the Director, Office of Departmental Personnel Security, to reflect organizational changes within the DOE's personnel security program.

The terms "Local Director of Security" and "Manager" would be revised to reflect organizational changes throughout DOE.

The term "national security information" would be deleted as it does not appear anywhere in this rule.

7. The current heading "CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SPECIAL NUCLEAR MATERIAL" located above current § 710.6 would be revised to add "SUBPART B—" at the beginning, and to delete "CRITERIA AND" to reflect the deletion of the criteria in proposed § 710.8.

8. Proposed § 710.6 "Cooperation by the individual."

(1) Proposed paragraph (a)(1) would revise the language for clarity but would not change it substantively.

(2) Proposed paragraph (a)(2) would update the reference to polygraph examinations to be consistent with the intent of 10 CFR part 709, and to update terms as in paragraph (a)(1), described above.

(3) Proposed paragraph (b) would reflect current DOE organizational structures.

(4) Proposed paragraph (c) would clarify the process by which an individual could appeal decisions taken by DOE under proposed paragraphs (a)(1) and (a)(2).

9. The proposed changes to § 710.7 "Application of the criteria" would remove references to the criteria and clarify that all determinations of eligibility for access authorization at DOE would be made in accordance with the national Adjudicative Guidelines. DOE has for several decades utilized the criteria currently in § 710.8 to determine eligibility for access authorization. When the national Adjudicative Guidelines were introduced in 1997, DOE began using them in conjunction with the criteria in § 710.8. The revision proposed today would make all access authorization determinations in reliance solely on the Adjudicative Guidelines. The current title "Application of the criteria" would be revised to replace "criteria" with "Adjudicative Guidelines." Additionally, the current § 710.9(a) would be renumbered § 710.7(d) to clearly indicate how information obtained by DOE may be considered derogatory under the Adjudicative Guidelines and used to determine access authorization eligibility. The last sentence of the current § 710.7(a) would be moved to the beginning of proposed § 710.7(d) where it more logically fits.

10. Current § 710.8 "Criteria" would be removed in its entirety, since exclusive reliance on the national Adjudicative Guidelines for making access authorization eligibility determinations would render this section unnecessary.

11. The current § 710.9 "Action on derogatory information" would be renumbered § 710.8.

(1) Current paragraph (a) would be moved to proposed § 710.7(d) as indicated in the discussion of proposed § 710.7.

(2) Proposed paragraph (a)—currently paragraph (b)—would remove the specific reference to a DOE mental evaluation as an example of actions that can be taken to resolve derogatory information. Since a mental evaluation is just one of many actions DOE can take to resolve derogatory information, DOE proposes to delete the example to avoid any misperception that DOE is limited to this action.

(3) Current paragraph (e) would be renumbered as paragraph (d) and would be revised to reflect changes in the DOE organizational structure.

12. Current § 710.10 "Suspension of access authorization" would be renumbered § 710.9.

(1) Proposed paragraph (b) would clarify that the Department can take immediate action to suspend an individual's access authorization, without taking actions to investigate derogatory information, when there are immediate threats to the national security or to the safety and security of a DOE facility or employee. An individual whose access authorization has been suspended under these circumstances would be entitled to due process protections as set forth in part 710 before the Department makes a final decision on the individual's eligibility for access authorization.

(2) The current paragraph (b) would be renumbered as paragraph (c). Proposed paragraph (c) would clarify the responsibilities of the Manager upon the recommendation of a Local Director of Security that an individual's access authorization should be suspended.

(3) Proposed paragraph (e) has been added to reflect the requirements of Presidential Policy Directive 19, and would provide that a Federal employee who believes action to suspend his or her access authorization was taken as retaliation for having made a protected disclosure of information may appeal the decision to the Department's Office of the Inspector General.

13. The current heading, "ADMINISTRATIVE REVIEW," located above current § 710.20, would be redesignated as Subpart C by adding, "SUBPART C—" at the beginning.

14. Section 710.20 "Purpose of administrative review" would remain unchanged except for an editorial revision to clarify that the procedures in proposed Subpart C "govern" and not just "establish methods for" the conduct of administrative review proceedings under this part.

15. Proposed § 710.21 "Notice to the individual"

(1) Proposed paragraph (b)(7) would clarify that the Administrative Judge has the option of conducting administrative review hearings via video teleconferencing. The use of video teleconferencing for this purpose has been piloted with successful results. Additionally, proposed paragraph (b)(7) would include information currently contained in § 710.34, "Attorney representation," which is proposed to be deleted. The current § 710.34

addresses the responsibility of the individual to provide DOE with notice of representation by an attorney, so the substance of § 710.34 would fit better in proposed paragraph (b)(7) since it already addresses the individual's right to attorney representation.

(2) Proposed paragraph (b)(8) would clarify that in the event that an individual fails to file a timely written request for a hearing before an Administrative Judge, the Manager shall issue a final decision to revoke or deny an individual's access authorization.

(3) Current paragraphs (c)(1) and (c)(3) would be renumbered as paragraphs (b)(10) and (b)(11), respectively, for better flow.

(4) Proposed new paragraphs (b)(12)(i) through (iii) would address the rights of individuals who, at the time they receive a notification letter pursuant to proposed § 710.21, are the subject of criminal proceedings for a felony offense or for an offense which is punishable by more than a year in prison. The proposed addition would clarify that individuals in that situation have the right to decide whether to continue with or withdraw from the Administrative Review process. Under the current rule, the discretion to continue with the Administrative Review process resides with DOE. Under the proposed revision, the individual concerned would decide to either (1) proceed with Administrative Review, requiring him/her to participate fully in the process, or (2) withdraw from the Administrative Review process, resulting in the administrative withdrawal of the individual's access authorization. Once the individual's criminal law matter concludes, a request for access authorization could be resubmitted.

(5) Proposed new paragraph (c)(2), embodying the requirements of Presidential Policy Directive 19, would be added to provide that a Federal employee who believes action to deny or revoke access authorization under the Administrative Review process was taken as retaliation for having made a protected disclosure of information may appeal the decision to the Department's Office of the Inspector General.

16. Proposed § 710.22 "Initial Decision Process" would clarify, in paragraph (c)(4), that if the individual does not exercise his/her right to appeal the initial decision of a Manager to deny or revoke access authorization within 30 calendar days of that decision, the Manager's initial decision would become final action not subject to further review or appeal.

17. Proposed § 710.25 "Appointment of Administrative Judge; prehearing conference; commencement of hearings" would clarify the authority of the Administrative Judge to conduct hearings via video teleconferencing and shorten the time limit for the Administrative Judge to commence a hearing, from 90 days to 60 days from the date the individual's request for hearing is received by the Office of Hearings and Appeals. This proposed change reflects the DOE Office of Hearings and Appeals' current internal procedures for commencing a hearing.

18. Proposed § 710.27 "Administrative Judge's decision" would indicate that the Administrative Judge shall render a decision as to the granting or restoring of an individual's access authorization within 30 calendar days from the date of receipt of the hearing transcript. This proposed change reflects the DOE Office of Hearings and Appeals' current internal procedures for issuing a decision.

19. Proposed § 710.28 "Action on the Administrative Judge's decision" would clarify that an Administrative Judge's decision shall constitute final action not subject to review or further appeal if a written request for a review of the decision by the Appeal Panel is not filed within a timely manner with the Director. Additionally, proposed paragraph (c) would address the process by which the Department may appeal a decision by the Administrative Judge to grant or to continue an individual's access authorization, to comport with the process in current paragraph (b) which addresses how the individual may appeal a decision by the Administrative Judge to deny or revoke access authorization.

20. Proposed § 710.29 "Final appeal process" would reflect, in paragraph (e), that an appeal decision would be based solely upon information in the administrative record at the time of the Manager's decision or the Administrative Judge's initial decision. Consequently, current paragraphs (h), (i) and (j) would be deleted in their entirety. Paragraphs (a) through (d) would be revised to reflect the current Departmental organization and to more clearly describe the process by which an Appeal Panel is convened. Paragraph (f) would be revised to clarify that the Appeal Panel's decision is not subject to further review or appeal.

21. Current § 710.30 "New evidence" would be deleted to reflect that an appeal decision would be based solely upon information in the administrative record at the time of the Manager's decision or the Administrative Judge's initial decision.

22. Proposed § 710.30 "Action by the Secretary," currently § 710.31 and renumbered § 710.30 in the proposed rule, would state that the Secretary's responsibilities could be delegated in accordance with Executive Orders 12968 and 10865. Also, references to current § 710.29(h) and (i) would be deleted since those sections are proposed to be deleted.

23. Proposed § 710.31 "Reconsideration of Access Eligibility." This proposed section, which would be renumbered from § 710.32, would provide for a minimum of one year between a final decision to deny or revoke access authorization and the time when an individual may apply for reconsideration. Currently, part 710 contains no time limit and many individuals seek reconsideration within days of receiving a final decision denying or revoking the individual's access authorization. Further, individuals have been permitted to file a request for reconsideration repeatedly, even after previous reconsideration requests have been denied. A one-year time limit would convey clear expectations to the individual as to when a reconsideration request could be accepted and would reduce the undue burden on the Department of considering multiple close-in-time appeals. In addition, paragraph (d) would more clearly describe the reconsideration process.

24. The current heading, "TERMINATIONS," located above current § 710.33 would be redesignated as Subpart D by adding, "SUBPART D—" at the beginning.

25. Proposed § 710.32 "Terminations." This proposed section, would be renumbered from § 710.33. Proposed § 710.32(a), currently § 710.33, would clarify that if the procedures of this part are terminated after an unfavorable initial agency decision has been rendered, any subsequent requests for access authorization for an individual would be processed as a review of the decision by the Appeal Panel, unless a minimum of one year had elapsed. Proposed § 710.32(b)(1), currently § 710.4(c), would indicate that the type of criminal proceedings for which DOE may take action to terminate processing an access authorization application include felony offenses and offenses punishable by one year of imprisonment or longer. Currently, this threshold is six months; this proposed change to one year would be consistent with the one-year time frame in proposed § 710.21. Proposed § 710.32(b)(2) and § 710.32(c), would be renumbered from current § 710.4(d) and (g), respectively.

26. Current § 710.34 "Notice to individual" would be deleted. The

substance of current § 710.34 would be added to proposed § 710.21.

27. Proposed § 710.33 "Time frames," currently § 710.35, would be renumbered as § 710.33.

28. Proposed § 710.34 "Acting Officials," currently § 710.36, would reflect organizational changes within the Department and permit the Deputy Associate Under Secretary for Environment, Health, Safety and Security greater flexibility to delegate his/her responsibilities under part 710. Currently, these responsibilities can only be exercised by persons in security-related Senior Executive Service positions. The proposed change would permit the Deputy Associate Under Secretary for Environment, Health, Safety and Security to delegate his/her authorities under part 710 to persons in senior security-related positions. It is expected that only persons in GS–15 or Senior Executive Service positions would meet this requirement. This proposed change would enhance the Department's ability to effectively manage the Administrative Review process prescribed by part 710.

APPENDICES

The national Adjudicative Guidelines would be Appendix A.

III. Procedural Requirements

A. Review Under Executive Orders 12866 and 13563

The regulatory action proposed today has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this proposed rule is not subject to review under the Executive Order by the Office of Information and Regulatory Affairs within the Office of Management and Budget.

DOE has also reviewed the proposed regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed regulation meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," (67 FR 53461, August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov.*

This proposed rule would amend procedures that apply to the determination of eligibility of individuals for access to classified information and access to special nuclear material. The proposed rule applies to individuals, and would not apply to "small entities," as that term is defined in the Regulatory Flexibility Act. As a result, if adopted, the proposed rule would not have a significant economic impact on a substantial number of small entities.

Accordingly, DOE certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required.

D. Review Under the Paperwork Reduction Act

This proposed rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the existing rule are strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it does not preempt State law and, if adopted, would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well being. The proposed rule, if adopted, will have no impact on family well-being. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution and use. This proposed rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved issuance of this proposed rule.

List of Subjects in 10 CFR Part 710

Administrative practice and procedure, Classified information, Government contracts, Government employees, nuclear energy.

Issued in Washington, DC, on March 28, 2016.

Elizabeth Sherwood-Randall,
Deputy Secretary.

For the reasons set out in the preamble, DOE is proposing to revise part 710 of title 10 of the Code of Federal Regulations as set forth below.

PART 710—PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER AND SPECIAL NUCLEAR MATERIAL

Subpart A—General Provisions

Sec.
710.1 Purpose.
710.2 Scope.
710.3 Reference.
710.4 Policy.
710.5 Definitions.

Subpart B—Eligibility for Access to Classified Matter or Special Nuclear Material

710.6 Cooperation by the individual.
710.7 Application of the adjudicative guidelines.
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Appendix A—Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 30, 2005)

Authority: 42 U.S.C. 2165, 2201, 5815, 7101, *et seq.*, 7383h–l; 50 U.S.C. 2401 *et seq.*; E.O. 10450, 3 CFR 1949–1953 comp., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 comp., p. 398, as amended, 3 CFR Chap. IV; E.O. 13526, 3 CFR 2010 Comp., pp. 298–327 (or successor orders); E.O. 12968, 3 CFR 1995 Comp., p. 391.

Subpart A—General Provisions

§ 710.1 Purpose.

(a) This part establishes the procedures for determining the eligibility of individuals described in

§ 710.2 for access to classified matter or special nuclear material, pursuant to the Atomic Energy Act of 1954, or for access to national security information in accordance with Executive Order 13526 (Classified National Security Information).

(b) This part implements: Executive Order 12968, 60 FR 40245 (August 2, 1995), as amended; Executive Order 13526, 75 FR 707 (January 5, 2010); Executive Order 10865, 25 FR 1583 (February 24, 1960), as amended; Executive Order 10450, 18 FR 2489 (April 27, 1954), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information approved by the President (the "Adjudicative Guidelines"; see Appendix A of this part).

§ 710.2 Scope.

The procedures outlined in this rule require the application of the Adjudicative Guidelines (see § 710.7) in determining eligibility for access authorization for:

(a) Employees (including consultants) of, and applicants for employment with, contractors and agents of the DOE;

(b) Access permittees of the DOE and their employees (including consultants) and applicants for employment;

(c) Employees (including consultants) of, and applicants for employment with, the DOE; and

(d) Other persons designated by the Secretary of Energy.

§ 710.3 Reference.

The Adjudicative Guidelines are set forth in Appendix A to this part.

§ 710.4 Policy.

(a) It is the policy of DOE to provide for the security of its programs in a manner consistent with traditional American concepts of justice and fairness. To this end, the Secretary has established procedures that will afford those individuals described in § 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

(b) It is also the policy of DOE that none of the procedures established for determining eligibility for access authorization shall be used for an improper purpose, including any attempt to coerce, restrain, threaten, intimidate, or retaliate against individuals for exercising their rights under any statute, regulation or DOE directive. Any DOE officer or employee violating, or causing the violation of this policy, shall be subject to appropriate disciplinary action.

§ 710.5 Definitions.

(a) As used in this part:

Access authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.

Administrative Judge means a DOE attorney appointed by the Director, Office of Hearings and Appeals, pursuant to § 710.25 of this part. An Administrative Judge shall be a U.S. citizen and shall hold a Q access authorization.

Classified matter means the material of thought or expression that is classified pursuant to statute or Executive Order.

Director means the Director, DOE Office of Departmental Personnel Security.

DOE Counsel means a DOE attorney assigned to represent DOE in proceedings under this part. DOE Counsel shall be a U.S. citizen and shall hold a Q access authorization.

Local Director of Security means the individual with primary responsibility for safeguards and security at the Chicago, Idaho, Oak Ridge, Richland, and Savannah River Operations Offices; for Naval Reactors, the individual(s) designated under the authority of the Director of the Naval Nuclear Propulsion Program; for the National Nuclear Security Administration (NNSA), the individual designated in writing by the Chief, Defense Nuclear Security; and for DOE Headquarters cases the Director, Office of Headquarters Personnel Security Operations.

Manager means the senior Federal official at the Chicago, Idaho, Oak Ridge, Richland, or Savannah River Operations Offices; for Naval Reactors, the individual designated under the authority of the Director of the Naval Nuclear Propulsion Program; for the NNSA, the individual designated in writing by the NNSA Administrator or Deputy Administrator; and for DOE Headquarters cases, the Director, Office of Headquarters Security Operations.

Secretary means the Secretary of Energy, as provided by section 201 of the Department of Energy Organization Act.

Special nuclear material means plutonium, uranium enriched in the isotope 233, or in the isotope 235, and any other material which, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, has been determined to be special nuclear material, but does not include source material; or any material artificially enriched by any of the foregoing, not including source material.

(b) Reserved.

Subpart B—Eligibility for Access to Classified Matter or Special Nuclear Material

§ 710.6 Cooperation by the individual.

(a)(1) It is the responsibility of the individual to provide full, frank, and truthful answers to DOE's relevant and material questions, and when requested, to furnish or authorize others to furnish information that the DOE deems pertinent to the individual's eligibility for access authorization. This obligation to cooperate applies when completing security forms, during the course of a personnel security background investigation or reinvestigation, and at any stage of DOE's processing of the individual's access authorization request, including but not limited to, personnel security interviews, DOE-sponsored mental health evaluations, and other authorized DOE investigative activities under this part. The individual may elect not to cooperate; however, such refusal may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization. In this event, any access authorization then in effect may be administratively withdrawn or, for applicants, further processing may be administratively terminated.

(2) It is the responsibility of an individual subject to 10 CFR 709.3(d) to consent to and take a polygraph examination required by part 709. A refusal to consent to or take such an examination may prevent DOE from reaching an affirmative finding required for continuing access authorization. In this event, any access authorization then in effect may be administratively withdrawn.

(b) If the individual believes that the provisions of paragraph (a) of this section have been inappropriately applied, the individual may file a written appeal of the action with the Director within 30 calendar days of the date the individual was notified of the action.

(c) Upon receipt of the written appeal, the Director shall conduct an inquiry as to the circumstances involved in the action and shall, within 30 calendar days of receipt of the written appeal, notify the individual, in writing, of his/her decision. If the Director determines that the action was inappropriate, the Director shall notify the Manager that access authorization must be reinstated or, for applicants, that the individual must continue to be processed for access authorization. If the Director determines the action was appropriate, the Director shall notify the individual of this fact in writing. The Director's decision is final and not subject to further review or appeal.

§ 710.7 Application of the Adjudicative Guidelines.

(a) The decision on an access authorization request is a comprehensive, commonsense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security.

(b) All such determinations shall be based upon application of the Adjudicative Guidelines, or any successor national standard issued under the authority of the President.

(c) Each Adjudicative Guideline sets forth a series of concerns that may create a doubt regarding an individual's eligibility for access authorization. In resolving these concerns, all DOE officials involved in the decision-making process shall consider: The nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

(d) If the reports of investigation of an individual or other reliable information tend to establish the validity and significance of one or more areas of concern as set forth in the Adjudicative Guidelines, such information shall be regarded as derogatory and create a question as to the individual's access authorization eligibility. Absent any derogatory information, a favorable determination will be made as to access authorization eligibility.

§ 710.8 Action on derogatory information.

(a) If a question arises as to the individual's access authorization eligibility, the Local Director of Security shall authorize the conduct of an interview with the individual, or other appropriate actions and, on the basis of the results of such interview or actions, may authorize the granting of the individual's access authorization. If, in the opinion of the Local Director of Security, the question as to the individual's access authorization eligibility has not been favorably resolved, the Local Director of Security shall submit the matter to the Manager with a recommendation that authority be obtained to process the individual's case under administrative review procedures set forth in this part.

(b) If the Manager agrees that unresolved derogatory information is present and that appropriate attempts to resolve such derogatory information have been unsuccessful, the Manager shall notify the Director of the proposal to conduct an administrative review proceeding, accompanied by an explanation of the security concerns and a duplicate Personnel Security File. If the Manager believes that the derogatory information has been favorably resolved, the Manager shall direct that access authorization be granted for the individual. The Manager may also direct the Local Director of Security to obtain additional information prior to deciding whether to grant the individual access authorization or to submit a request for authority to conduct an administrative review proceeding. A decision in the matter shall be rendered by the Manager within 10 calendar days of its receipt.

(c) Upon receipt of the Manager's notification, the Director shall review the matter and confer with the Manager on:

(1) The institution of administrative review proceedings set forth in §§ 710.20 through 710.30;

(2) The granting of access authorization; or

(3) Other actions as the Director deems appropriate.

(d) The Director shall act pursuant to one of these options within 30 calendar days of receipt of the Manager's notification unless an extension is granted by the Deputy Associate Under Secretary for Environment, Health, Safety and Security.

§ 710.9 Suspension of access authorization.

(a) If derogatory information is received, the Local Director of Security shall authorize action(s), to be taken on an expedited basis, to resolve the question pursuant to § 710.8(a). If the question as to the individual's continued access authorization eligibility is not resolved in favor of the individual, the Local Director of Security shall submit the matter to the Manager with the recommendation that the individual's access authorization be suspended pending the final determination resulting from the procedures set forth in this part.

(b) If the information received is determined to represent an immediate threat to national security or to the safety or security of a DOE facility or employee, or is determined to be so serious in nature that action(s) to resolve the matter as set forth in § 710.8(b) are not practical or advisable, the Local Director of Security shall immediately submit the matter to the Manager with a recommendation that the individual's access authorization be suspended pending the final determination resulting from the procedures set forth in this part. The Manager shall either authorize the immediate suspension of access authorization, or shall direct the Local Director of Security to take action(s) as set forth in § 710.8(b), in an expedited manner, to resolve the matter.

(c) The Manager shall, within two working days of receipt of the recommendation from the Local Director of Security to suspend the individual's DOE access authorization:

(1) Approve the suspension of access authorization; or

(2) Direct the continuation of access authorization, or

(3) Take or direct other such action(s) as the Manager deems appropriate.

(d) Upon suspension of an individual's access authorization pursuant to paragraph (c)(1) of this section, the individual, the individual's employer, any other DOE office or program having an access authorization interest in the individual, and, if known, any other government agency where the individual holds an access authorization, security clearance, or access approval, or to which the DOE has certified the individual's DOE access authorization, shall be notified immediately in writing. The appropriate DOE database for tracking access authorizations and related actions shall also be updated. Notification to the individual shall reflect, in general terms, the reason(s) why the suspension has been affected. Pending final determination of the individual's eligibility for access authorization from the operation of the procedures set forth in this part, the individual shall not be afforded access to classified matter, special nuclear material, or unescorted access to security areas that require the individual to possess a DOE access authorization.

(e) Written notification to the individual shall include, if the individual is a Federal employee, notification that if the individual believes that the action to suspend his/her access authorization was taken as retaliation against the individual for having made a protected disclosure, as defined in Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information,* or any successor directive issued under the authority of the President, the individual may appeal this matter directly to the DOE Office of the Inspector General. Such an appeal shall have no impact upon the continued processing of the individual's access authorization eligibility under this part.

(f) Following the decision to suspend an individual's DOE access authorization pursuant to paragraph (c)(1) of this section, the Manager shall immediately notify the Director in writing of the action and the reason(s) therefor. In addition, the Manager, within 10 calendar days of the date of suspension (unless an extension of time is approved by the Director), shall notify the Director in writing of his/her proposal to conduct an administrative review proceeding, accompanied by an explanation of its basis and a duplicate Personnel Security File.

(g) Upon receipt of the Manager's notification, the Director shall review the matter and confer with the Manager on:

(1) The institution of administrative review procedures set forth in §§ 710.20 through 710.30; or

(2) The reinstatement of access authorization; or

(3) Other actions as the Director deems appropriate.

(h) The Director shall act pursuant to one of these options within 30 calendar days of the receipt of the Manager's notification unless an extension is granted by the Deputy Associate Under Secretary for Environment, Health, Safety and Security.

Subpart C—Administrative Review

§ 710.20 Purpose of Administrative Review.

These procedures govern the conduct of the administrative review of questions concerning an individual's eligibility for access authorization when it is determined that such questions cannot be favorably resolved by interview or other action.

§ 710.21 Notice to the individual.

(a) Unless an extension is authorized in writing by the Director, within 30 calendar days of receipt of authority to institute administrative review procedures, the Manager shall prepare and deliver to the individual a notification letter approved by the local Office of Chief Counsel, or the Office of the General Counsel for Headquarters cases. Where practicable, the letter shall be delivered to the individual in person.

(b) The letter shall state:

(1) That reliable information in the possession of DOE has created a substantial doubt concerning the individual's eligibility for access authorization.

(2) The information which creates a substantial doubt regarding the individual's access authorization eligibility (which shall be as comprehensive and detailed as the national security permits) and why that information creates such doubt.

(3) That the individual has the option to have the substantial doubt regarding eligibility for access authorization resolved in one of two ways:

(i) By the Manager, without a hearing, on the basis of the existing information in the case; or

(ii) By personal appearance before an Administrative Judge (a "hearing").

(4) That, if the individual desires a hearing, the individual must, within 20 calendar days of the date of receipt of the notification letter, make a written request for a hearing to the Manager from whom the letter was received.

(5) That the individual may also file with the Manager the individual's written answer to the reported information which raises the question of the individual's eligibility for access authorization, and that, if the individual requests a hearing without filing a written answer, the request shall be deemed a general denial of all of the reported information.

(6) That, if the individual so requests, a hearing shall be scheduled before an Administrative Judge, with due regard for the convenience and necessity of the parties or their representatives, for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization. The Administrative Judge shall decide whether the hearing will be conducted via video teleconferencing.

(7) That, if a hearing is requested, the individual will have the right to appear personally before an Administrative Judge or, at the discretion of the Administrative Judge, via video teleconferencing; to present evidence in his/her own behalf, through witnesses, or by documents, or both; and, subject to the limitations set forth in § 710.26(g), to be present during the entire hearing and be accompanied, represented, and advised by counsel or other representative of the individual's choosing and at the individual's own expense at every stage of the proceedings. Such representative or counsel, if applicable, shall be identified in writing to the Administrative Judge and DOE Counsel and authorized by the individual to receive all correspondence, transcripts and other documents pertaining to the proceedings under this part.

(8) That the individual's failure to file a timely written request for a hearing before an Administrative Judge in accordance with paragraph (b)(4) of this section, unless time deadlines are extended for good cause, shall be considered as a relinquishment by the individual of the right to a hearing provided in this part, and that in such event a final decision to deny or revoke the individual's access authorization shall be made by the Manager.

(9) That in any proceedings under this subpart DOE Counsel will participate on behalf of and representing DOE and that any statements made by the individual to DOE Counsel may be used in subsequent proceedings;

(10) The individual's access authorization status until further notice;

(11) The name and telephone number of the designated DOE official to contact for any further information desired concerning the proceedings, including an explanation of the individual's rights under the Freedom of Information Act and Privacy Act;

(12) If applicable, that if the individual is currently the subject of criminal charges for a felony offense or an offense punishable by imprisonment of one year or more, the individual must elect either to continue with the Administrative Review process and have the substantial doubt regarding eligibility for access authorization resolved by the Manager or by a hearing, or to withdraw from the Administrative Review process.

(i) If the individual elects to continue with the Administrative Review process a determination as to the individual's access authorization shall be made by the Manager or by an Administrative Judge via a hearing. The individual will be expected to participate fully in the process. Any refusal to cooperate, answer all questions, or provide requested information may prevent DOE from reaching an affirmative finding required for granting or continuing access authorization.

(ii) If the individual elects to withdraw from the Administrative Review process, the individual's access authorization shall be administratively withdrawn. Such action shall be taken in accordance with applicable procedures set forth in pertinent Departmental directives. Any future requests for access authorization for the individual must be accompanied by documentary evidence of resolution of the criminal charges.

(iii) The individual must, within 20 calendar days of receipt of the notification letter, indicate in writing his/her decision to continue or to withdraw from the Administrative Review process. Such notification must be made to the Manager from whom the notification letter was received.

(c) The notification letter referenced in paragraph (b) of this section shall also:

(1) Include a copy of this part, and

(2) For Federal employees only, indicate that if the individual believes that the action to process the individual under this part was taken as retaliation against the individual for having made a protected disclosure, as defined in Presidential Policy Directive 19, *Protecting Whistleblowers with Access to Classified Information,* or any successor directive issued under the authority of the President, the individual may appeal this matter directly to the DOE Office of the Inspector General. Such an appeal shall have no impact upon the continued processing of the individual's access authorization eligibility under this part.

§ 710.22 Initial decision process.

(a) The Manager shall make an initial decision as to the individual's access authorization eligibility based on the existing information in the case if:

(1) The individual fails to respond to the notification letter by filing a timely written request for a hearing before an Administrative Judge or fails to respond to the notification letter after requesting an extension of time to do so;

(2) The individual's response to the notification letter does not request a hearing before an Administrative Judge; or

(3) The Administrative Judge refers the individual's case to the Manager in accordance with § 710.25(e) or § 710.26(b).

(b) Unless an extension of time is granted by the Director, the Manager's initial decision as to the individual's access authorization eligibility shall be made within 15 calendar days of the date of receipt of the information in paragraph (a) of this section. The Manager shall either grant or deny, or reinstate or revoke, the individual's access authorization.

(c) A letter reflecting the Manager's initial decision shall be signed by the Manager and delivered to the individual within 15 calendar days of the date of the Manager's decision unless an extension of time is granted by the Director. If the Manager's initial decision is unfavorable to the individual, the individual shall be advised:

(1) Of the Manager's unfavorable decision and the reason(s) therefor;

(2) That within 30 calendar days from the date of receipt of the letter, the individual may file a written request for a review of the Manager's initial decision, through the Director, to the DOE Headquarters Appeal Panel (Appeal Panel);

(3) That the Director may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a review of the case by the Appeal Panel; and

(4) That if the written request for a review of the Manager's initial decision by the Appeal Panel is not filed within 30 calendar days of the individual's receipt of the Manager's letter, the Manager's initial decision in the case shall be final and not subject to further review or appeal.

§ 710.23 Extensions of time by the manager.

The Manager may, for good cause shown, at the written request of the individual, extend the time for filing a written request for a hearing, and/or the time for filing a written answer to the matters contained in the notification letter. The Manager shall notify the Director, in writing, when such extensions have been approved.

§ 710.24 Appointment of DOE Counsel.

(a) Upon receipt from the individual of a written request for a hearing, a DOE attorney shall forthwith be assigned by the Manager to act as DOE Counsel.

(b) DOE Counsel is authorized to consult directly with the individual if he/she is not represented by counsel, or with the individual's counsel or other representative if so represented, to clarify issues and reach stipulations with respect to testimony and contents of documents and physical evidence. Such stipulations shall be binding upon the individual and the DOE Counsel for the purposes of this part.

§ 710.25 Appointment of Administrative Judge; prehearing conference; commencement of hearings.

(a) Upon receipt of a request for a hearing, the Manager shall in a timely manner transmit that request to the Office of Hearings and Appeals, and identify the DOE Counsel. The Manager shall at the same time transmit a copy of the notification letter and the individual's response to the Office of Hearings and Appeals.

(b) Upon receipt of the hearing request from the Manager, the Director, Office of Hearings and Appeals, shall appoint, as soon as practicable, an Administrative Judge.

(c) Immediately upon appointment, the Administrative Judge shall notify the individual and DOE Counsel of his/her identity and the address to which all further correspondence should be sent.

(d) The Administrative Judge shall have all powers necessary to regulate the conduct of proceedings under this part, including, but not limited to, establishing a list of persons to receive service of papers, issuing subpoenas for witnesses to attend the hearing or for the production of specific documents or physical evidence, administering oaths and affirmations, ruling upon motions, receiving evidence, regulating the course of the hearing, disposing of procedural requests or similar matters, and taking other actions consistent with the regulations in this part. Requests for subpoenas shall be liberally granted except where the Administrative Judge finds that the issuance of subpoenas would result in evidence or testimony that is repetitious, incompetent, irrelevant, or immaterial to the issues in the case. The Administrative Judge may take sworn testimony, sequester witnesses, and control the dissemination or reproduction of any record or testimony taken pursuant to this part, including correspondence, or other relevant records or physical evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person.

(e) The Administrative Judge shall determine the day, time, and place for the hearing and shall decide whether the hearing will be conducted via video teleconferencing. Hearings will normally be held at or near the relevant DOE facility, unless the Administrative Judge determines that another location would be more appropriate. Normally the location for the hearing will be selected for the convenience of all participants. In the event the individual fails to appear at the time and place specified, without good cause shown, the record in the case shall be closed and returned to the Manager, who shall then make an initial determination regarding the eligibility of the individual for DOE access authorization in accordance with § 710.22(a)(3).

(f) At least 7 calendar days prior to the date scheduled for the hearing, the Administrative Judge shall convene a prehearing conference for the purpose of discussing stipulations and exhibits, identifying witnesses, and disposing of other appropriate matters. The conference will usually be conducted by telephone.

(g) Hearings shall commence within 60 calendar days from the date the individual's request for a hearing is received by the Office of Hearings and Appeals. Any extension of the hearing date past 60 calendar days from the date the request for a hearing is received by the Office of Hearings and Appeals shall be decided by the Director, Office of Hearings and Appeals.

§ 710.26 Conduct of hearings.

(a) In all hearings conducted under this part, the individual shall have the right to be represented by a person of his/her own choosing, at the individual's own expense. The individual is responsible for producing witnesses in his/her own behalf, including requesting the issuance of subpoenas, if necessary, or presenting testimonial, documentary, or physical evidence before the Administrative Judge to support the individual's defense to the derogatory information contained in the notification letter. With the exception of procedural or scheduling matters, the Administrative Judge is prohibited from initiating or otherwise engaging in *ex parte* discussions about the case during the pendency of proceedings under this part.

(b) Unless the Administrative Judge finds good cause for deferring issuance of a decision, in the event that the individual unduly delays the hearing, such as by failure to meet deadlines set by the Administrative Judge, the record shall be closed, and an initial decision shall be made by the Manager on the basis of the record in the case per § 710.22(a)(3).

(c) Hearings shall be open only to DOE Counsel, duly authorized representatives of DOE, the individual and the individual's counsel or other representatives, and such other persons as may be authorized by the Administrative Judge. Unless otherwise ordered by the Administrative Judge, witnesses shall testify in the presence of the individual but not in the presence of other witnesses.

(d) DOE Counsel shall assist the Administrative Judge in establishing a complete administrative hearing record in the proceeding and bringing out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Administrative Judge. The individual shall be afforded the opportunity of presenting testimonial, documentary, and physical evidence, including testimony by the individual in the individual's own behalf. The proponent of a witness shall conduct the direct examination of that witness. All witnesses shall be subject to cross-examination, except as provided in § 710.26(l). Whenever reasonably possible, testimony shall be given in person.

(e) The Administrative Judge may ask the witnesses any questions which the Administrative Judge deems appropriate to assure the fullest possible disclosure of relevant and material facts.

(f) During the course of the hearing, the Administrative Judge shall rule on all objections raised.

(g) In the event it appears during the course of the hearing that classified matter may be disclosed, it shall be the duty of the Administrative Judge to assure that disclosure is not made to persons who are not authorized to receive it, and take other appropriate measures.

(h) Formal rules of evidence shall not apply, but the Federal Rules of Evidence may be used as a guide for procedures and principles designed to assure production of the most probative evidence available. The Administrative Judge shall admit into evidence any matters, either oral or written, which are material, relevant, and competent in determining issues involved, including the testimony of responsible persons concerning the integrity of the individual. In making such determinations, the utmost latitude shall be permitted with respect to relevancy, materiality, and competency. The Administrative Judge may also exclude evidence which is incompetent, immaterial, irrelevant, or unduly repetitious. Every reasonable effort shall be made to obtain the best evidence available. Subject to §§ 710.26(l), 710.26(m), 710.26(n) and 710.26(o), hearsay evidence may, at the discretion of the Administrative Judge and for good cause show, be admitted without strict adherence to technical rules of admissibility and shall be accorded such weight as the Administrative Judge deems appropriate.

(i) Testimony of the individual and witnesses shall be given under oath or affirmation. Attention of the individual and each witness shall be directed to 18 U.S.C. 1001 and 18 U.S.C. 1621.

(j) The Administrative Judge shall endeavor to obtain all the facts that are reasonably available in order to arrive at a decision. If, prior to or during the proceedings, in the opinion of the Administrative Judge, the derogatory information in the notification letter is not sufficient to address all matters into which inquiry should be directed, the Administrative Judge may recommend to the Manager concerned that, in order to give more adequate notice to the individual, the notification letter should be amended. Any amendment shall be made with the concurrence of the local Office of Chief Counsel or the Office of the General Counsel in Headquarters cases. If, in the opinion of the Administrative Judge, the circumstances of such amendment may involve undue hardship to the individual because of limited time to respond to the new derogatory information in the notification letter, an appropriate adjournment shall be granted upon the request of the individual.

(k) A written or oral statement of a person relating to the characterization in the notification letter of any organization or person other than the individual may be received and considered by the Administrative Judge without affording the individual an opportunity to cross-examine the person making the statement on matters relating to the characterization of such organization or person, provided the individual is given notice that such a statement has been received and may be considered by the Administrative Judge, and is informed of the contents of the statement, provided such notice is not prohibited by paragraph (g) of this section.

(l) Any oral or written statement adverse to the individual relating to a controverted issue may be received and considered by the Administrative Judge without affording an opportunity for cross-examination in either of the following circumstances:

(1) The head of the agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of the informant's identity would be substantially harmful to the national interest;

(2) The Secretary or the Secretary's special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency as to the reliability of the person and the accuracy of the statement concerned, that:

(i) The statement concerned appears to be reliable and material; and

(ii) Failure of the Administrative Judge to receive and consider such statement would, in view of the access sought to classified matter or special nuclear material, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify:

(A) Due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the individual, or

(B) Due to some other specified cause determined by the Secretary to be good and sufficient.

(m) Whenever procedures under paragraph (l) of this section are used:

(1) The individual shall be given a summary or description of the information which shall be as comprehensive and detailed as the national interest permits, and

(2) Appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such person(s).

(n) Records compiled in the regular course of business, or other evidence other than investigative reports obtained by DOE, may be received and considered by the Administrative Judge subject to rebuttal without authenticating witnesses, provided that such information has been furnished to DOE by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary to safeguard classified matter or special nuclear material.

(o) Records compiled in the regular course of business, or other evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the individual, may be received and considered by the Administrative Judge, provided that:

(1) The Secretary or the Secretary's special designee for that particular purpose has made a preliminary determination that such evidence appears to be material;

(2) The Secretary or the Secretary's special designee for that particular purpose has made a determination that failure to receive and consider such evidence would, in view of the access sought to classified matter or special nuclear material, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such evidence is made available to the individual. In every such case, information as to the authenticity and accuracy of such evidence furnished by the investigative agency shall be considered.

(p) The Administrative Judge may request the Local Director of Security to arrange for additional investigation on any points which are material to the deliberations of the Administrative Judge and which the Administrative Judge believes need further investigation or clarification. In this event, the Administrative Judge shall set forth in writing those issues upon which more evidence is requested, identifying where possible persons or sources from which the evidence should be sought. The Local Director of Security shall make every effort through appropriate sources to obtain additional information upon the matters indicated by the Administrative Judge.

(q) A written transcript of the entire hearing shall be made and, except for portions containing classified matter, a copy of such transcript shall be furnished to the individual without cost.

(r) Whenever information is made a part of the record under the exceptions authorized by paragraphs (l) or (o) of this section, the record shall contain certificates evidencing that the determinations required therein have been made.

§ 710.27 Administrative Judge's decision.

(a) The Administrative Judge shall carefully consider the entire record of the proceeding and shall render a decision, within 30 calendar days of the receipt of the hearing transcript, as to whether granting or restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. In resolving a question concerning the eligibility of an individual for access authorization under these procedures, the Administrative Judge shall consider the factors stated in § 710.7(c) to determine whether the findings will be favorable or unfavorable.

(b) In reaching the findings, the Administrative Judge shall consider the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, their credibility, and the authenticity and accuracy of documentary evidence, or lack of evidence on any material points in issue. If the individual is, or may be, handicapped by the non-disclosure to the individual of undisclosed information or by lack of opportunity to cross-examine confidential informants, the Administrative Judge shall take that fact into consideration. The possible adverse impact of the loss of the individual's access authorization upon the DOE program in which the individual works shall not be considered by the Administrative Judge.

(c) The Administrative Judge shall make specific findings based upon the record as to the validity of each instance of derogatory information contained in the notification letter and the significance which the Administrative Judge attaches to it. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings.

(d) The Administrative Judge's decision shall be based on the Administrative Judge's findings of fact. If, after considering all of the factors set forth in § 710.7(c) in light of the Adjudicative Guidelines, the Administrative Judge is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or reinstate access authorization for the individual, the Administrative Judge shall render a favorable decision; otherwise, the Administrative Judge shall render an unfavorable decision. Within 15 calendar days of the Administrative Judge's written decision, the Administrative Judge shall provide copies of the decision and the administrative record to the Manager and the Director.

§ 710.28 Action on the Administrative Judge's decision.

(a) Within 10 calendar days of receipt of the decision and the administrative record, unless an extension of time is granted by the Director, the Manager shall:

(1) Notify the individual in writing of the Administrative Judge's decision;

(2) Advise the individual in writing of the appeal procedures available to the individual in paragraph (b) of this section if the decision is unfavorable to the individual;

(3) Advise the individual in writing of the appeal procedures available to the Manager and the Director in paragraph (c) of this section if the decision is favorable to the individual; and

(4) Provide the individual and/or his/her counsel or other representative a copy of the Administrative Judge's decision and the administrative record.

(b) If the Administrative Judge's decision is unfavorable to the individual:

(1) The individual may file with the Director a written request for further review of the decision by the Appeal Panel along with a statement required by paragraph (e) of this section within 30 calendar days of the individual's receipt of the Manager's notice;

(2) The Director may, for good cause shown, extend the time for filing a request for further review of the decision by the Appeal Panel at the written request of the individual, provided the request for an extension of time is filed by the individual within 30 calendar days of receipt of the Manager's notice;

(3) The Administrative Judge's decision shall be final and not subject to review or appeal if the individual does not:

(i) File a written request for a review of the decision by the Appeal Panel or for an extension of time to file a written request for review of the decision by the Appeal Panel in accordance with paragraphs (b)(1) or (b)(2) of this section, or

(ii) File a written request for review of the decision by the Appeal Panel after having been granted an extension of time to do so.

(c) If the Administrative Judge's decision is favorable to the individual:

(1) The Manager, with the concurrence of the Director, shall grant or reinstate the individual's access authorization within 30 calendar days of the Administrative Judge's decision becoming final, or

(2) The Manager or the Director may file a written request with the Deputy Associate Under Secretary for Environment, Health, Safety and Security for review of the decision by the Appeal Panel, along with statement required by paragraph (e) of this section, within 30 calendar days of the individual's receipt of the Manager's notice.

(3) The Deputy Associate Under Secretary for Environment, Health, Safety and Security may, for good cause shown, extend the time for filing a request for review of the decision by the Appeal Panel at the request of the Manager or Director, provided the request for an extension of time is filed by the Manager or Director within 30 calendar days of the receipt of the Manager's notice;

(4) The Administrative Judge's decision shall constitute final action, and not be subject to review or appeal, if the Manager or Director does not:

(i) File a written request for review of the decision by the Appeal Panel or for an extension of time to file a written request for review of the decision by the Appeal Panel in accordance with paragraphs (c)(2) or (c)(3) of this section, or

(ii) File a written request for a review of the decision by the Appeal Panel after having been granted an extension of time to do so.

(d) A copy of any request for review of the individual's case by the Appeal Panel filed by the Manager or the Director shall be provided to the individual by the Manager.

(e) The party filing a request for review by the Appeal Panel shall include with the request a statement identifying the issues upon which the appeal is based. A copy of the request and statement shall be served on the other party, who may file a response with the Appeal Panel within 20 calendar days of receipt of the statement.

§ 710.29 Final appeal process.

(a) The Appeal Panel shall be convened by the Deputy Associate Under Secretary for Environment, Health, Safety and Security to review and render a final decision in access authorization eligibility cases referred by the individual, the Manager, or the Director in accordance with §§ 710.22 or 710.28.

(b) The Appeal Panel shall consist of three members, each of whom shall be a DOE Headquarters employee, a United States citizen, and hold a DOE Q access authorization. The Deputy Associate Under Secretary for Environment, Health, Safety and Security shall serve as a permanent member of the Appeal Panel and as the Appeal Panel Chair. The second member of the Appeal Panel shall be a DOE attorney designated by the General Counsel. The head of the DOE Headquarters element which has cognizance over the individual whose access authorization eligibility is being considered may designate an employee to act as the third member on the Appeal Panel; otherwise, the third member shall be designated by the Chair. Only one member of the Appeal Panel shall be from the security field.

(c) In filing a written request for a review by the Appeal Panel in accordance with §§ 710.22 and 710.28, the individual, or his/her counsel or other representative, shall identify the issues upon which the appeal is based. The written request, and any response, shall be made a part of the administrative record. The Director shall provide staff support to the Appeal Panel as requested by the Chair.

(d) Within 15 calendar days of the receipt of the request for review of a case by the Appeal Panel, the Chair shall arrange for the Appeal Panel members to convene and review the administrative record or provide a copy of the administrative record to the Appeal Panel members for their independent review.

(e) The Appeal Panel shall consider only that evidence and information in the administrative record at the time of the Manager's or the Administrative Judge's initial decision.

(f) Within 45 calendar days of receipt of the administrative record, the Appeal Panel shall render a final decision in the case. If a majority of the Appeal Panel members determine that it will not endanger the common defense and security and will be clearly consistent with the national interest, the Chair shall grant or reinstate the individual's access authorization; otherwise, the Chair shall deny or revoke the individual's access authorization. The Appeal Panel's written decision shall be made a part of the administrative record and is not subject to further review or appeal.

(g) The Chair, through the Director, shall inform the individual in writing, as well as the individual's counsel or other representative, of the Appeal Panel's final decision. A copy of the correspondence shall also be provided to the other panel members and the Manager.

§ 710.30 Action by the Secretary.

(a) Whenever an individual has not been afforded an opportunity to cross-examine witnesses who have furnished information adverse to the individual under the provisions of §§ 710.26(l) or (o), the Secretary may issue a final decision to deny or revoke access authorization for the individual after personally reviewing the administrative record and any additional material provided by the Chair. The Secretary's authority may, in accordance with applicable provisions of Executive Order 12968, be delegated to the Deputy Secretary where the effected individual is a Federal employee. The Secretary's authority, in accordance with applicable provisions of Executive Order 10865, may not be delegated where the effected individual is a contractor employee. This authority may be exercised only when the Secretary determines that the circumstances described in § 710.26(l) or (o) are present, and such determination shall be final and not subject to review or appeal.

(b) Whenever the Secretary issues a final decision as to an individual's access authorization eligibility, the individual and other concerned parties shall be notified in writing by the Chair of that decision and of the Secretary's findings with respect to each instance of derogatory information contained in the notification letter and each substantial issue identified in the statement in support of the request for review to the extent allowed by the national security.

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Secretary to issue subpoenas or to deny or revoke access to classified matter or special nuclear material.

§ 710.31 Reconsideration of access eligibility.

(a) If, pursuant to the procedures set forth in §§ 710.20 through 710.30 the Manager, Administrative Judge, Appeal Panel, or the Secretary has made a decision granting or reinstating an individual's access authorization, eligibility shall be reconsidered as a new administrative review under the procedures set forth in this part when previously unconsidered derogatory information is identified, or the individual violates a commitment upon which the DOE previously relied to favorably resolve an issue of access authorization eligibility.

(b) If, pursuant to the procedures set forth in §§ 710.20 through 710.31, the Manager, Administrative Judge, Appeal Panel, or the Secretary has made a decision denying or revoking the individual's access authorization, eligibility may be reconsidered only when the individual so requests in writing, when there is a bona fide offer of employment requiring access authorization, and when there is either material and relevant new evidence which the individual and the individual's representatives were without fault in failing to present earlier, or convincing evidence of rehabilitation or reformation.

(1) A request for reconsideration shall be accepted when a minimum of one year has elapsed since the date of the Manager's, Administrative Judge's, Appeal Panel's or Secretary's final decision, or of a previous denial of reconsideration. Requests must be submitted in writing to the Deputy Associate Under Secretary for Environment, Health, Safety and Security, and must include an affidavit setting forth in detail the new evidence or evidence of rehabilitation or reformation.

(2) If the Deputy Associate Under Secretary for Environment, Health, Safety and Security approves the request for reconsideration of an individual's access authorization eligibility, he/she shall so notify the individual, and shall direct the Manager to take appropriate actions to determine whether the individual is eligible for access authorization.

(3) If the Deputy Associate Under Secretary for Environment, Health, Safety and Security denies the request for reconsideration of an individual's access authorization eligibility, he/she shall so notify the individual in writing. Such a denial is final and not subject to review or appeal.

(4) If, pursuant to the provisions of § 710.31(2), the Manager determines the individual is eligible for access authorization, the Manager shall grant access authorization.

(5) If, pursuant to the provisions of § 710.31(2), the Manager determines the individual remains ineligible for access authorization, the Manager shall so notify the Director in writing. If the Director concurs, the Director shall notify the individual in writing. This decision is final and not subject to review or appeal. If the Director does not concur, the Director shall confer with the Manager on further actions.

(6) Determinations as to eligibility for access authorization pursuant to paragraphs (f) or (g) of this section may be based solely upon the mitigation of derogatory information which was relied upon in a final decision to deny or to revoke access authorization. If, pursuant to the procedures set forth in paragraph (d) of this section, previously unconsidered derogatory information is identified, a determination as to eligibility for access authorization must be subject to a new Administrative Review proceeding.

Subpart D—Miscellaneous

§ 710.32 Terminations.

(a) If the individual is no longer an applicant for access authorization or no longer requires access authorization, the procedures of this part shall be terminated without a final decision as to the individual's access authorization eligibility, unless a final decision has been rendered prior to the DOE being notified of the change in the individual's pending access authorization status. Where the procedures of this part have been terminated pursuant to this paragraph after an unfavorable initial agency decision as to the individual's access authorization eligibility has been rendered, any subsequent request for access authorization for the individual will be processed as a request for a review of the initial agency decision by the Appeal Panel and a final agency decision will be rendered pursuant to § 710.29, unless a minimum of one year has elapsed since the date of the initial agency decision.

(b) With regard to applicants (individuals for whom DOE has not yet approved access authorization), DOE may administratively terminate processing an application for access authorization under the following circumstances:

(1) If the applicant is currently the subject of criminal proceedings for a felony offense or an offense that is punishable by a term of imprisonment of one year or longer, or is awaiting or serving a form of probation, suspended or deferred sentencing, or parole. Once all judicial proceedings on the criminal charges have been finally resolved, and the term (if any) of imprisonment, probation, or parole has been completed, DOE processing of a request for access authorization shall resume upon receipt by DOE of a written request therefor, provided that the individual has a bona fide offer of employment requiring access authorization.

(2) If sufficient information about the individual's background cannot be obtained to meet the investigative scope and extent requirements for the access authorization requested.

(c) If an individual believes that the provisions of paragraph (b) of this section have been inappropriately applied, a written appeal may be filed with the Director within 30 calendar days of the date the individual was notified of the action. The Director shall act on the written appeal as described in § 710.6(c).

§ 710.33 Time frames.

Statements of time established for processing aspects of a case under this part are the agency's desired time frames in implementing the procedures set forth in this part. However, failure to meet the time frames shall have no impact upon the final disposition of an access authorization by a Manager, Administrative Judge, the Appeal Panel, or the Secretary, and shall confer no procedural or substantive rights upon an individual whose access authorization eligibility is being considered.

§ 710.34 Acting officials.

Except for the Secretary, the responsibilities and authorities conferred in this part may be exercised by persons who have been designated in writing as acting for, or in the temporary capacity of, the following DOE positions: The Local Director of Security; the Manager; the Director, or the General Counsel. The responsibilities and authorities of the Deputy Associate Under Secretary for Environment, Health, Safety and Security may be exercised by persons in senior security-related positions within the Office of Environment, Health, Safety and Security who have been designated in writing as acting for, or in the temporary capacity of, the Deputy Associate Under Secretary for Environment, Health, Safety and Security, with the approval of the Associate Under Secretary for Environment, Health, Safety and Security.

Appendix A—Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (December 30, 2005)

1. *Introduction.* The following adjudicative guidelines are established for all U.S. government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or

grantees and their employees and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs, and are to be used by government departments and agencies in all final clearance determinations. Government departments and agencies may also choose to apply these guidelines to analogous situations regarding persons being considered for access to other types of protected information.

Decisions regarding eligibility for access to classified information take into account factors that could cause a conflict of interest and place a person in the position of having to choose between his or her commitment to the United States, including the commitment to protect classified information, and any other compelling loyalty. Access decisions also take into account a person's reliability, trustworthiness and ability to protect classified information. No coercive policing could replace the self-discipline and integrity of the person entrusted with the nation's secrets as the most effective means of protecting them. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working in a secure environment where protecting classified information is paramount.

2. *The Adjudicative Process.*

(a) The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

(1) The nature, extent, and seriousness of the conduct;

(2) The circumstances surrounding the conduct, to include knowledgeable participation;

(3) The frequency and recency of the conduct;

(4) The individual's age and maturity at the time of the conduct;

(5) The extent to which participation is voluntary;

(6) The presence or absence of rehabilitation and other permanent behavioral changes;

(7) The motivation for the conduct;

(8) The potential for pressure, coercion, exploitation, or duress; and

(9) The likelihood of continuation or recurrence.

(b) Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.

(c) The ability to develop specific thresholds for action under these guidelines is limited by the nature and complexity of human behavior. The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person.

(1) GUIDELINE A: Allegiance to the United States;

(2) GUIDELINE B: Foreign Influence;

(3) GUIDELINE C: Foreign Preference;

(4) GUIDELINE D: Sexual Behavior;

(5) GUIDELINE E: Personal Conduct;

(6) GUIDELINE F: Financial Considerations;

(7) GUIDELINE G: Alcohol Consumption;

(8) GUIDELINE H: Drug Involvement;

(9) GUIDELINE I: Psychological Conditions;

(10) GUIDELINE J: Criminal Conduct;

(11) GUIDELINE K: Handling Protected Information;

(12) GUIDELINE L: Outside Activities;

(13) GUIDELINE M: Use of Information Technology Systems.

(d) Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding the whole-person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

(e) When information of security concern becomes known about an individual who is currently eligible for access to classified information, the adjudicator should consider whether the person:

(1) Voluntarily reported the information;

(2) Was truthful and complete in responding to questions;

(3) Sought assistance and followed professional guidance, where appropriate;

(4) Resolved or appears likely to favorably resolve the security concern:

(5) Has demonstrated positive changes in behavior and employment;

(6) Should have his or her access temporarily suspended pending final adjudication of the information.

(f) If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

GUIDELINE A: ALLEGIANCE TO THE UNITED STATES

3. *The Concern.* An individual must be of unquestioned allegiance to the United States. The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

4. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Involvement in, support of, training to commit, or advocacy of any act of sabotage, espionage, treason, terrorism, or sedition against the United States of America;

(b) Association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;

(c) Association or sympathy with persons or organizations that advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means, in an effort to:

(1) Overthrow or influence the government of the United States or any state or local government;

(2) Prevent Federal, state, or local government personnel from performing their official duties;

(3) Gain retribution for perceived wrongs caused by the Federal, state, or local government;

(4) Prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

5. *Conditions that could mitigate security concerns include:*

(a) The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(b) The individual's involvement was only with the lawful or humanitarian aspects of such an organization;

(c) Involvement in the above activities occurred for only a short period of time and was attributable to curiosity or academic interest;

(d) The involvement or association with such activities occurred under such unusual circumstances, or so much times has elapsed, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or loyalty.

GUIDELINE B: FOREIGN INFLUENCE

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercioon by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

7. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) Connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(c) Counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

(d) Sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

(e) A substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;

(f) Failure to report, when required, association with a foreign national;

(g) Unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual to possible future exploitation, inducement, manipulation, pressure, or coercion;

(i) Conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

8. *Conditions that could mitigate security concerns include:*

(a) The nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) There is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) The foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) The individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country;

(f) The value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

GUIDELINE C: FOREIGN PREFERENCE

9. *The Concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

10. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) Possession of a current foreign passport;

(2) Military service or a willingness to bear arms for a foreign country;

(3) Accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) Residence in a foreign country to meet citizenship requirements;

(5) Using foreign citizenship to protect financial or business interests in another country;

(6) Seeking or holding political office in a foreign country;

(7) Voting in a foreign election;

(b) Action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest;

(d) Any statement or action that shows allegiance to a country other than the United States: For example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

11. *Conditions that could mitigate security concerns include:*

(a) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) The individual has expressed a willingness to renounce dual citizenship;

(c) Exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) Use of a foreign passport is approved by the cognizant security authority;

(e) The passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

(f) The vote in a foreign election was encouraged by the United States Government.

GUIDELINE D: SEXUAL BEHAVIOR

12. *The Concern.* Sexual behavior that involves a criminal offense, indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in the Guideline may be raised solely on the basis of the sexual orientation of the individual.

13. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(b) A pattern of compulsive, self-destructive, or high-risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;

(c) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

(d) Sexual behavior of a public nature and/or that which reflects lack of discretion or judgment.

14. *Conditions that could mitigate security concerns include:*

(a) The behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

(b) The sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) The behavior no longer serves as a basis for coercion, exploitation, or duress;

(d) The sexual behavior is strictly private, consensual, and discreet.

GUIDELINE E: PERSONAL CONDUCT

15. *The Concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) Refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation;

(b) Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

16. *Conditions that could raise a security concern and may be disqualifying also include:*

(a) Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) Disruptive, violent, or other inappropriate behavior in the workplace;

(3) A pattern of dishonesty or rule violations;

(4) Evidence of significant misuse of Government or other employer's time or resources;

(e) Personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as:

(1) Engaging in activities which, if known, may affect the person's personal, professional, or community standing, or

(2) While in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) Violation of a written or recorded commitment made by the individual to the employer as a condition of employment;

(g) Association with persons involved in criminal activity.

17. *Conditions that could mitigate security concerns include:*

(a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) Association with persons involved in criminal activities has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

GUIDELINE F: FINANCIAL CONSIDERATIONS

18. *The Concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

19. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Inability or unwillingness to satisfy debts;

(b) Indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.

(c) A history of not meeting financial obligations;

(d) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) Consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) Financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

(g) Failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) Unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income;

(i) Compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (*i.e.* increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

20. *Conditions that could mitigate security concerns include:*

(a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The conditions that resulted in the financial problem were largely beyond the person's control (*e.g.* loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) The person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) The affluence resulted from a legal source of income.

GUIDELINE G: ALCOHOL CONSUMPTION

21. *The Concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

22. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) Diagnosis by a duly qualified medical professional (*e.g.*, physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) Relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program;

(g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

23. *Conditions that could mitigate security concerns include:*

(a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) The individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) The individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

GUIDELINE H: DRUG INVOLVEMENT

24. *The Concern.* Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (*e.g.,* marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) Inhalants and other similar substances

(b) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

25. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any drug abuse (see above definition);

(b) Testing positive for illegal drug use;

(c) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) Diagnosis by a duly qualified medical professional (*e.g.,* physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

(f) Failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) Any illegal drug use after being granted a security clearance;

(h) Expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

26. *Conditions that could mitigate security concerns include:*

(a) The behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) A demonstrated intent not to abuse any drugs in the future, such as:

(1) Dissociation from drug-using associates and contacts;

(2) Changing or avoiding the environment where drugs were used;

(3) An appropriate period of abstinence;

(4) A signed statement of intent with automatic revocation of clearance for any violation;

(c) Abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended;

(d) Satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

GUIDELINE I: PSYCHOLOGICAL CONDITIONS

27. *The Concern.* Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (*e.g.,* clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

28. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;

(b) An opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness;

(c) The individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, *e.g.* failure to take prescribed medication.

29. *Conditions that could mitigate security concerns include:*

(a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) The past emotional instability was a temporary condition (*e.g.,* one caused by a death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;

(e) There is no indication of a current problem.

GUIDELINE J: CRIMINAL CONDUCT

30. *The Concern.* Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

31. *Conditions that could raise a security concern and may be disqualifying include:*

(a) A single serious crime or multiple lesser offenses;

(b) Discharge or dismissal from the Armed Forces under dishonorable conditions;

(c) Allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

(d) Individual is currently on parole or probation;

(e) Violation of parole or probation, or failure to complete a court-mandated rehabilitation program.

32. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) Evidence that the person did not commit the offense;

(d) There is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

GUIDELINE K: HANDLING PROTECTED INFORMATION

33. *The Concern.* Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

34. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Deliberate or negligent disclosure of classified or other protected information to unauthorized persons, including but not limited to personal or business contacts, to the media, or to persons present at seminars, meetings, or conferences;

(b) Collecting or storing classified or other protected information in any unauthorized location;

(c) Loading, drafting, editing, modifying, storing, transmitting, or otherwise handling classified reports, data, or other information on any unapproved equipment including but not limited to any typewriter, word processor, or computer hardware, software, drive, system, gameboard, handheld, "palm" or pocket device or other adjunct equipment;

(d) Inappropriate efforts to obtain or view classified or other protected information outside one's need to know;

(e) Copying classified or other protected information in a manner designed to conceal or remove classification or other document control markings;

(f) Viewing or downloading information from a secure system when the information is beyond the individual's need to know;

(g) Any failure to comply with rules for the protection of classified or other sensitive information;

(h) Negligence or lax security habits that persist despite counseling by management;

(i) Failure to comply with rules or regulations that results in damage to the National Security, regardless of whether it was deliberate or negligent.

35. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior, or it happened so infrequently or under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;

(c) The security violations were due to improper or inadequate training.

GUIDELINE L: OUTSIDE ACTIVITIES

36. *The Concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

37. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any employment or service, whether compensated or volunteer, with:

(1) The government of a foreign country;

(2) Any foreign national, organization, or other entity;

(3) A representative of any foreign interest;

(4) Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology;

(b) Failure to report or fully disclose an outside activity when this is required.

38. *Conditions that could mitigate security concerns include:*

(a) Evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States;

(b) The individual terminates the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

GUIDELINE M: USE OF INFORMATION TECHNOLOGY SYSTEMS

39. *The Concern.* Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, processing, manipulation, storage, or protection of information.

40. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Illegal or unauthorized entry into any information technology system or component thereof;

(b) Illegal or unauthorized modification, destruction, manipulation or denial of access to information, software, firmware, or hardware in an information technology system;

(c) Use of any information technology system to gain unauthorized access to another system or to a compartmented area within the same system;

(d) Downloading, storing, or transmitting classified information on or to any unauthorized software, hardware, or information technology system;

(e) Unauthorized use of a government or other information technology system;

(f) Introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, guidelines or regulations.

(g) Negligence or lax security habits in handling information technology that persist despite counseling by management;

(h) Any misuse of information technology, whether deliberate or negligent, that results in damage to the national security.

41. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The misuse was minor and done only in the interest of organizational efficiency and effectiveness, such as letting another person use one's password or computer when no other timely alternative was readily available;

(c) The conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor.

[FR Doc. 2016–08885 Filed 4–18–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0048]

RIN 1625–AA08

Special Local Regulation, Jacksonville Grand Prix of the Seas; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary special local regulation on the waters of the St. Johns River near downtown Jacksonville, FL during the 3rd Annual Jacksonville Grand Prix of the Seas, a series of high-speed boat races. This action is necessary to provide for the safety of life on the navigable waters during the event. This special local regulation will be enforced daily on June 3rd and 4th from 9 a.m. to 5 p.m. This proposed rulemaking would prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port (COTP) Jacksonville or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 19, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0048 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant, Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone (904) 714–7616, email *Allan.H.Storm@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On January 6, 2016, Powerboat P1–USA, LLC notified the Coast Guard that it will conduct a series of high speed boat races on the St. Johns River near downtown Jacksonville, FL on June 3rd and 4th, 2016. COTP Jacksonville determined that the potential hazards associated with high speed boat races necessitate the establishment of a special local regulation.

The purpose of this rulemaking is to ensure the safety of life on the navigable waters of the United States by prohibiting all vessels and persons not participating in the event from entering the regulated area. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233.

III. Discussion of Proposed Rule

The COTP proposes to establish a special local regulation for the 3rd Annual Jacksonville Grand Prix of the Seas, a series of high-speed boat races. The regulated area includes the waters of the St. Johns River near downtown Jacksonville, FL and it will be enforced daily 9 a.m. to 5 p.m. on June 3rd and 4th, 2016. Approximately 10 high-speed race boats are anticipated to participate in the races. The regulated area would encompass an area, located just southeast of the Fuller-Warren Bridge that is approximately 2,730 yards long and approximately 1,215 yards wide. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The Coast Guard has determined that this NPRM is not a significant regulatory action for the following reasons: (1) The special local regulation would be enforced for a total of only 16 hours over the course of two days; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the COTP Jacksonville or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated if authorized by the COTP Jacksonville or a designated representative; and (4) the Coast Guard would provide advance notification of the special local regulation to the local maritime community via Broadcast Notice to Mariners or by on-scene designated representative.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit through the regulated area may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation that would prohibit persons and vessels from transiting through an approximated 2,730 yard by 1,215 yard regulated area during a two day racing event lasting eight hours daily. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T07–0048 to read as follows:

§ 100.35T07–0048 Special Local Regulation, Jacksonville Grand Prix of the Seas; St. Johns River, Jacksonville, FL.

(a) *Regulated Area.* The following regulated area is a special local regulation located on the waters of the St. Johns River near downtown Jacksonville, FL. All waters of the St. Johns River encompassed within the following points: Starting at Point 1 in position 30°18.647′ N., 081°40.450′ W.; thence southeast to Point 2 in position 30°18.551′ N., 081°40.120′ W.; thence southwest to Point 3 in position 30°17.212′ N., 081°40.424′ W.; thence northwest to Point 4 in position 30°17.399′ N., 081°41.088′ W.; thence northeast to Point 5 in position 30°18.436′ N., 081°40.701′ W.; thence northeast back to origin. These coordinates are based on North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Jacksonville in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Jacksonville or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Jacksonville by telephone at 904–714–7557, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Jacksonville or designated representative.

(3) The Coast Guard will provide notice of the regulated area through Broadcast Notice to Mariners via VHF–FM channel 16 or by on-scene designated representatives.

(d) *Enforcement Period.* This section will be enforced daily 9 a.m. to 5 p.m. on June 3rd and 4th, 2016.

Dated: April 12, 2016.

J.F. Dixon,

Captain, U.S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 2016–08967 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2015–1118]

RIN 1625–AA01

Anchorage Grounds; Lower Chesapeake Bay, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering amending the regulations for Hampton Roads, VA and adjacent waters anchorages by establishing a new anchorage, near Cape Charles, VA on the Lower Chesapeake Bay. This advance notice of proposed rulemaking (ANPRM) provides information relevant to, and solicits public comment on the possible creation of a Federal anchorage west of Cape Charles, VA on the Chesapeake Bay. Port of Virginia infrastructure improvements and growth in commercial vessel traffic entering the port, including large and deep-draft vessels have prompted this solicitation for comments on a potential proposed rulemaking. If the Coast Guard proceeds with a proposed rulemaking, the intended effect would be to ensure that the Hampton Roads Anchorage Grounds continue to safely support current and future maritime commerce and commercial vessel anchoring needs. We invite your comments on this ANPRM.

DATES: Comments and related material must be received by the Coast Guard on or before July 18, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2015–1118 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Lieutenant Commander Barbara Wilk, Sector Hampton Roads Waterway Management Division, phone 757–668–5581, email *Barbara.Wilk@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ANPRM	Advance notice of proposed rulemaking
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NM	Nautical Miles
VA	Virginia

II. Background, Purpose, and Legal Basis

Recreational, public, and commercial vessels use the Hampton Roads Anchorage Grounds. General regulations covering the anchorage of vessels in the port are set out in 33 CFR 110.168. Coast Guard regulations covering the rulemaking process are set out in 33 CFR subpart 1.05.

The Coast Guard held a meeting on February 20, 2015, with U.S. Navy and commercial maritime stakeholders to discuss solutions to enhance Port of Virginia waterway use. Attendance included Virginia Pilots Association, Virginia Maritime Association and local area pilots. Various courses of action were suggested by attendees as possible options to further enhance maritime commerce concurrently with U.S. Navy military requirements. This meeting provided valued insight toward developing a potential new anchorage ground that would facilitate the future growth of Port of Virginia.

The purpose of this ANPRM is to solicit comments on potential proposed rulemaking to help accommodate increase in both the number of commercial vessels and traffic density and to enhance navigation safety for vessels transiting the Hampton Roads area by creating a Federal commercial anchorage west of Cape Charles, VA on the Lower Chesapeake Bay. Current trends indicate that shipping companies will call on the Port of Virginia using larger, deeper-draft vessels. Our intent for any proposed rulemaking would be to facilitate the safety of the port anchorages by providing an anchorage of adequate size, depth, and capacity to accommodate commercial vessels calling on the Port of Virginia.

The legal basis and authorities for this advance notice of proposed rulemaking are found in 33 U.S.C. 471, 1221 through 1236; 33 CFR 1.05–1, Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorages. The Coast Guard is now considering a proposed rulemaking to establish a new commercial anchorage area in the vicinity of the Port of Virginia, west of Cape Charles, VA.

III. Discussion of Potential Proposed Rulemaking

The Coast Guard is considering a new deep-water anchorage ground for commercial vessels and to support projected growth in maritime commerce vessel traffic throughout the Port of Virginia. We are considering locating an anchorage ground in the Lower Chesapeake Bay, between Cape Charles and York Spit Channel. The anchorage ground under consideration is triangular in shape with an eastern boundary 7 nautical miles (NM) in length along the descending bank off Cape Charles, VA. The western boundary of the anchorage ground runs parallel with and 500 yards east of York Spit Channel for 6.3 NM, from lighted buoy 38 thence south to lighted buoy 30. The southern boundary of the anchorage is 5.4 NM in length measured along a line commencing 500 yards east of York Spit lighted buoy 30 thence eastward to a position approximately 1.5 miles from Cape Charles shoreline. The anchorages coordinates includes all waters of the Lower Chesapeake Bay bounded by a line connecting the following points: Latitude 37°17′33″ N., longitude 076°06′22″ W., thence southeast to latitude 37°11′29″ N., longitude 076°01′57″ W., thence west to latitude 37°11′29″ N., longitude 076°08′43″ W., thence northeast to point of origin. The approximate depths of the proposed new anchorage would be located in naturally deep water with charted depths ranging from 30 feet to 130 feet and the majority of the eastern part of the triangular anchorage having depths in excess of 60 feet. Current trends indicate that shipping companies will call on the Port of Virginia using larger, deeper draft vessels.

You may find a drawing with an illustration of the contemplated anchorage ground in the docket. Look for Illustration of Contemplated Anchorage "R."

IV. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this ANPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

We plan to hold two public meetings to receive oral comments on this ANPRM and will announce the dates, times, and locations in a separate document published in the **Federal Register**. If you signed up for docket email alerts mentioned in the paragraph above, you will receive an email notice when the public meeting notice is published and placed in the docket.

V. Information Requested

Before the Coast Guard proposes specific regulations to amend and establish a new anchorage on the Lower Chesapeake Bay, the Coast Guard is requesting input from the public. The Coast Guard is particularly interested in receiving comments from all of those who have a stake in the viability of a Cape Charles alternative commercial deep-water anchorage ground for commercial vessels and all those port stake holders who contribute to the unique characteristics of the Port of Virginia. Please provide additional information not specifically solicited by this ANPRM if you believe it would be helpful in understanding the implications of creating a Federal anchorage west of Cape Charles. Please submit any comments or concerns you may have in accordance with the **ADDRESSES** section.

Dated: March 25, 2016.

Stephen P. Metruck,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2016–09029 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0248]

RIN 1625–AA00

Safety Zones; Recurring Events in Captain of the Port Duluth Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its safety zones regulations for annual events in the Captain of the Port Duluth Zone. This proposed rule would update the locations for two safety zones, add three safety zones, and modify the format of the regulations to list the annual events and corresponding safety zones in table form. These proposed amendments will protect spectators, participants, and vessels from the hazards associated with annual marine events and improve the clarity and readability of the regulations.

DATES: Comments and related material must be received by the Coast Guard on or before May 19, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0248 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade John Mack, Chief of Waterways Management, Marine Safety Unit Duluth, U.S. Coast Guard; telephone (218) 725–3818 or by email *John.V.Mack@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

II. Background, Purpose, and Legal Basis

On May 31, 2013 the Coast Guard published an NPRM in the **Federal Register** (78 FR 32608) entitled "Recurring Events in the Captain of the Port Duluth Zone." The NPRM proposed to establish 8 permanent safety zones for annually recurring events in the Captain of the Port Duluth Zone under § 165.943. The NPRM was open for comment for 30 days.

On August 12, 2013 the Coast Guard published the Final Rule in the **Federal Register** (78 FR 48802) after receiving no comments on the NPRM. Through this proposed rule, the Coast Guard seeks to update § 165.943.

The legal basis for this proposed rule is the Coast Guard's authority to establish safety zones: 33 U.S.C. 1231; 33 CFR 1.05–1, 160.5; Department of Homeland Security Delegation No. 0170.1.

This proposed rule would update the locations of two safety zones (Cornucopia 4th of July Fireworks Display & Superior Man Triathlon), add three new permanent safety zones (City of Bayfield 4th of July Fireworks Display, Two Harbors 4th of July Fireworks Display, & Power Boat Championship Presented by TCPBA) for recurring safety zones, and modify the format of § 165.943 to list annual events and corresponding safety zones in table form. These changes are necessary to protect spectators, participants, and vessels from the hazards associated with annual marine events, and to improve the overall clarity and readability of the rule. These hazards related to the annual events include obstructions to the waterway that may result in marine casualties; explosive danger and flaming debris falling into the water from fireworks; and large congregations of vessels and waterborne spectators in the vicinity of the annual events.

This proposed rule will also arrange the safety zones listed in § 165.943 into a table sorted in ascending order of event date. This change in format is intended to improve clarity and readability and to reduce redundancy in the regulation.

Finally, this proposed rule clarifies that the enforcement dates and times for each safety zone listed in Table 165.943 is subject to change. While the events are anticipated to annually recur on certain dates, factors, to include inclement weather, may result in postponement. In the event of a postponement, the Coast Guard will issue a Notice of Enforcement with updated enforcement dates and times, and corresponding Broadcast Notice to Mariners for on scene notice.

III. Discussion of Proposed Rule

The amendments to this proposed rule are necessary to ensure the safety of vessels and people during annual events taking place on or near federally maintained waterways in the Captain of the Port Duluth Zone. Although this proposed rule will be in effect year-round, the specific safety zones listed in Table 165.943 will only be enforced during a specified period of time when the event is on-going.

When a Notice of Enforcement for a particular safety zone is published, entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth, or his or her designated representative. The Captain of the Port Duluth or his or her designated representative can be contacted via VHF Channel 16. All persons and vessels granted permission to enter the safety zone must comply with all instructions given by the Captain of the Port Duluth or his or her designated representative.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zones. The safety zones created by this proposed rule will be small and enforced for short periods of time. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port Duluth. Before the enforcement of these safety zones, the Coast Guard will issue local Broadcast Notice to Mariners so that vessel owners and operators may plan accordingly.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. An environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of safety zones and is therefore categorically excluded under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.943 to read as follows:

§ 165.943 Safety Zones; Recurring Events in Captain of the Port Duluth Zone.

(a) *Regulations.* The following regulations apply to the safety zones listed in Table 165.943 of this section:

(1) The Coast Guard will provide advance notice of the enforcement date and time of the safety zone being enforced in Table 165.943, by issuing a Notice of Enforcement, as well as, a Broadcast Notice to Mariners.

(2) During the enforcement period, the general regulations found in § 165.23 shall apply.

(b) *Contacting the Captain of the Port.* While a safety zone listed in this section is enforced, the Captain of the Port Duluth or his or her on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Duluth, or his or her on-scene representative.

(c) *Exemption.* Public vessels, defined as any vessel owned or operated by the United States or by State or local governments, operating in an official capacity are exempted from the requirements of this section.

TABLE 165.943

[Datum NAD 1983]

Event	Location	Event date
(1) Bridgefest Regatta Fireworks Display.	All waters of the Keweenaw Waterway in Hancock, MI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 47°07′22″ N., 088°35′39″ W.	Mid June.
(2) Ashland 4th of July Fireworks Display.	All waters of Chequamegon Bay in Ashland, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°35′50″ N., 090°52′59″ W.	On or around July 4th.
(3) City of Bayfield 4th of July Fireworks Display.	All waters of the Lake Superior North Channel in Bayfield, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°48′39″ N., 090°48′35″ W.	On or around July 4th.
(4) Cornucopia 4th of July Fireworks Display.	All waters of Siskiwit Bay in Cornucopia, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°51′35″ N., 091°06′13″ W.	On or around July 4th.
(5) Duluth 4th Fest Fireworks Display ...	All waters of the Duluth Harbor Basin, Northern Section in Duluth, MN within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°46′14″ N., 092°06′16″ W.	On or around July 4th.
(6) LaPointe 4th of July Fireworks Display,	All waters of Lake Superior in LaPointe, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°46′40″ N., 090°47′22″ W.	On or around July 4th.
(7) Two Harbors 4th of July Fireworks Display.	All waters of Agate Bay in Two Harbors, MN within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 47°00′54″ N., 091°40′04″ W.	On or around July 4th.
(8) Point to LaPointe Swim	All waters of the Lake Superior North Channel between Bayfield and LaPointe, WI within an imaginary line created by the following coordinates: 46°48′50″ N., 090°48′44″ W., moving southeast to 46°46′44″ N., 090°47′33″ W., then moving northeast to 46°46′52″ N., 090°47′17″ W., then moving northwest to 46°49′03″ N., 090°48′25″ W., and finally returning to the starting position.	Early August.
(9) Lake Superior Dragon Boat Festival Fireworks Display.	All waters of Superior Bay in Superior, WI within the arc of a circle with a radius of no more than 1,120 feet from the launch site at position 46°43′23″ N., 092°03′45″ W.	Late August.
(10) Superior Man Triathlon	All waters of the Duluth Harbor Basin, Northern Section in Duluth, MN within an imaginary line created by the following coordinates: 46°46′36″ N., 092°06′06″ W., moving southeast to 46°46′32″ N., 092°06′01″ W., then moving northeast to 46°46′45″ N., 092°05′45″ W., then moving northwest to 46°46′49″ N., 092°05′49″ W., and finally returning to the starting position.	Late August.
(11) Power Boat Championship Presented by TCPBA.	All waters of Superior Bay in Superior, WI within the arc of a circle with a radius of no more than 1,000 feet from the position of 46°43′30″ N., 092°03′57″ W.	Late August.

Dated: March 31, 2016.

A.H. Moore, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2016–09031 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2015–1127]

RIN 1625–AA00

Safety Zone; 2016 Wings Over Vermont Air Show, Lake Champlain, Burlington, VT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for an aerobatic demonstration over the navigable waters of Lake Champlain along the shoreline in Burlington, VT. This temporary safety zone will be necessary to protect spectators and vessels from hazards associated with the air show. Entry into, transit through, mooring or anchoring within this regulated area will be prohibited unless authorized by the Captain of the Port (COTP) Sector Northern New England (SNNE). We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before June 20, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2015–1127 using the Federal eRulemaking Portal *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Chief Marine Science Technician Chris Bains, Waterways Management Division at Coast Guard Sector Northern New England, telephone (207) 347–5003, or email *Chris.D.Bains@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On December 24, 2015, the Vermont National Guard notified the Coast Guard that they will be holding the 2016 Wings over Vermont Air Show on Lake Champlain along the shoreline of Burlington, VT from August 12, 2016 through August 14, 2016. The aeronautical box designed for the performers will measure 12,000 feet long and 4,770 feet wide and will be approximately 1,100 feet from shoreline. On water viewing locations will be placed both east and west of the air show box to control vessel traffic during the demonstration. Lake Champlain Transportation Company will redirect the ferry route around the aeronautical box so not to disrupt the safety zone during the enforcement period.

The purpose of this rulemaking is to ensure the safety of the spectator vessels and other traffic using the navigable waters near or around the designated aeronautical box. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone for the Wings over Vermont Air Show from 9 a.m. to 6 p.m. on August 12- 14, 2016 on Lake Champlain, along the shoreline of Burlington, VT. The safety zone would cover all navigable waters within an aeronautical box extending to and including the breakwater bounded by the following coordinates: 44°29′24″ N./073°14′44″ W.; 44°29′24″ N./073°14′03″ W.; 44°28′56″ N./073°14′03″ W.; 44°28′50″ N./073°13′48″ W.; 44°28′12″ N./073°13′33″ W.; 44°27′47″ N./073°14′03″ W.; 44°27′25″ N./073°14′03″ W.; 44°27′25″ N./073°14′44″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 a.m. to 5 p.m. aerobatic displays. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The Coast Guard has determined that this rule is not a significant regulatory action for the following reasons: The safety zone will be of limited duration and will only be in effect during a portion of three days, it will allow vessels to transit in waters directly adjacent to the safety zone, and coordinated efforts have been made to direct the ferry traffic around the safety zone so not to disrupt service on Lake Champlain. Additionally, maritime advisories will be posted in the Local Notice to Mariners and the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine Channel 16 prior to and during the entire duration of the enforcement period.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under the Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting a portion of three days and would prohibit entry into without permission from the COTP. Normally such actions are categorically excluded from further review under paragraph 34 of figure 2–1 of Commandant Instruction M16475.1D. A preliminary environmental analysis checklist supporting this is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5 and Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T01–1127 to read as follows:

§ 165.T01–1127 Safety Zone; 2016 Wings Over Vermont Air Show, Lake Champlain; Burlington, VT

(a) *Location*. The following area is a Safety Zone: All navigable waters, from surface to bottom, of Lake Champlain, Burlington, VT, within an aeronautical box extending to and including the breakwater bounded by the following coordinates: 44°29′24″ N./073°14′44″ W.; 44°29′24″ N./073°14′03″ W.; 44°28′56″ N./073°14′03″ W.; 44°28′50″ N./073°13′48″ W.; 44°28′12″ N./073°13′33″ W.; 44°27′47″ N./073°14′03″ W.; 44°27′25″ N./073°14′03″ W.; 44°27′25″ N./073°14′44″ W.

(b) *Effective and enforcement period*. This rule would be effective and would be enforced with actual notice from 9 a.m. until 6 p.m. on August 12–14, 2016.

(c) *Regulations*. (1) The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entry into, transiting, mooring, anchoring or remaining within this safety zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his designated representatives.

(3) Persons and vessels may request permission to enter the safety zone by contacting the COTP or the COTP's designated representative on VHF–16 or via phone at 207–767–0303.

(4) The "designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, or onboard a local or state agency vessel that is authorized to act in support of the Coast Guard. Additionally, the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

Dated: March 16, 2016.

M.A. Baroody,

Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.

[FR Doc. 2016–09033 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0154]

RIN 1625–AA00

Safety Zones; San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend several permanent safety zones located in the Captain of the Port San Francisco zone that are established to protect public safety during annual firework displays. These amendments will update listed events to accurately reflect the firework display locations. This proposed rulemaking would limit the movement of vessels within the established firework display areas unless authorized by the Captain of the Port (COTP) San Francisco or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 19, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0154 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Junior Grade Christina Ramirez, U.S. Coast Guard Sector San Francisco; telephone 415–399–3585, email *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
PATCOM	Patrol Commander
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard is conducting this rulemaking under the authority of 33 U.S.C. 1231. Fireworks displays are held annually on a recurring basis on the navigable waters within the COTP San Francisco zone. Three of the annual fireworks events that require safety zones do not currently reflect the accurate location of the respective display sites. These safety zones are necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway from the hazards associated with firework displays. The effect of these proposed safety zones will be to restrict general navigation in the vicinity of the events, from the start of each event until the conclusion of that event. Except for the persons or vessels authorized by the COTP San Francisco or a designated representative, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks displays to ensure the safety of participants, spectators, and transiting vessels.

III. Discussion of Proposed Rule

The Coast Guard has reviewed 33 CFR 165.1191for accuracy. The Coast Guard is proposing to amend Table 1 in § 1191 to update three events to reflect the current event locations. These events are listed numerically in Table 1 of this section: (7), (8), (22). The display locations currently listed have been deemed undesirable or hazardous by the event sponsors. The COTP San Francisco has determined that potential hazards associated with the current fireworks locations would be a safety concern for event crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of each safety zone. Vessel traffic would be able to safely transit around each safety zone which would impact a small designated area of the COTP San Francisco zone for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Local Notice to Mariner and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zones lasting less than 1 hour that would prohibit entry within 1,000 feet of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend to 33 CFR part 165 as follows:

33 CFR PART 165—[AMENDED]

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

In § 165.1191, in Table 1 to § 165.1191, revise items 7, 8, and 22, to read as follows:

§ 165.1191 Northern California and Lake Tahoe Area Annual Fireworks Events.

* * * * *

TABLE 1 TO § 165.1191

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* * * * * * *

7. San Francisco Independence Day Fireworks

Sponsor	The City of San Francisco.
Event Description	Fireworks Display.
Date	July 4th.
Location 1	A barge located approximately 1000 feet off San Francisco Pier 39 at approximately 37°48′49″ N., 122°24′46″ W.
Location 2	A barge located at the end of the San Francisco Municipal Pier at Aquatic Park at approximately 37°48′39″ N., 122°25′37″ W.
Regulated Area 1	1. 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.
Regulated Area 2	2. 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.

8. Fourth of July Fireworks, Berkeley Marina

Sponsor	Berkeley Marina.
Event Description	Fireworks Display.
Date	July 4th.
Location	A barge located near Berkeley Pier at approximately 37°51′40″ N., 122°19′19″ W.
Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.

* * * * * * *

22. Monte Foundation Fireworks

Sponsor	Monte Foundation Fireworks.
Event Description	Fireworks Display.
Date	Second Saturday in October.
Location	Capitola Pier in Capitola, CA.
Regulated Area	1,000-foot safety zone around the navigable waters of the Capitola Pier.

* * * * * * *

Dated: March 11, 2016

Gregory G. Stump,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2016–09030 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2016–0018; FRL–9945–04–Region 4]

Air Plan Approval and Air Quality Designation; TN; Redesignation of the Shelby County 2008 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On January 19, 2016, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a request for the Environmental Protection Agency (EPA) to redesignate the portion of Tennessee that is within the Memphis, Tennessee-Mississippi-Arkansas (Memphis, TN–MS–AR) 2008 8-hour ozone nonattainment area (hereafter referred to as the "Tennessee portion of the Memphis, TN–MS–AR Area" or "Tennessee portion of the Area") to attainment for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) and an associated State Implementation Plan (SIP) revision containing a maintenance plan and a base year emissions inventory for the Area. EPA is proposing to approve the base year emissions inventory for the Tennessee portion of the Area into the SIP; to determine that the Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS; to approve the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the year 2027 for the Tennessee portion of the Area, into the SIP; and to redesignate the Tennessee portion of the Area to attainment for the 2008 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the MVEBs for the Tennessee portion of the Memphis, TN–MS–AR Area.

DATES: Comments must be received on or before May 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0018, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Spann can be reached by phone at (404) 562–9029 or via electronic mail at *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

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IX. Proposed Actions.
X. Statutory and Executive Order Reviews

I. What are the actions EPA is proposing to take?

EPA is proposing to take the following four separate but related actions, one of which involves multiple elements: (1) To approve the base year emissions inventory for the 2008 8-hour ozone NAAQS for the Tennessee portion of the Area into the Tennessee SIP; (2) to determine that the Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS;[1] (3) to approve Tennessee's plan for maintaining the 2008 8-hour ozone NAAQS (maintenance plan), including the associated MVEBs for the Tennessee portion of the Memphis, TN–MS–AR Area, into the SIP; and (4) to redesignate the Tennessee portion of the Memphis, TN–MS–AR Area to attainment for the 2008 8-hour ozone NAAQS. EPA is also notifying the public of the status of EPA's adequacy determination for the MVEBs for the Tennessee portion of the Memphis, TN–MS–AR Area. The Memphis, TN–MS–AR Area consists of all of Shelby County in Tennessee, all of Crittenden County in Arkansas, and a portion of DeSoto County in Mississippi. Today's proposed actions are summarized below and described in greater detail throughout this notice of proposed rulemaking.

Based on the 2008 8-hour ozone nonattainment designation for the Memphis, TN–MS–AR Area, Tennessee was required to develop a nonattainment SIP revision addressing certain Clean Air Act (CAA or Act) requirements. Specifically, pursuant to CAA section 182(a)(3)(B) and section 182(a)(1), the state was required to submit a SIP revision addressing emissions statements and emissions inventory requirements, respectively, for its portion of the Area. EPA approved the emissions statements requirements for the Tennessee portion of the Area into the SIP in a separate action. *See* 80 FR 11974 (March 5, 2015). Today, EPA is proposing to determine that the base year emissions inventory, as submitted in the State's January 19, 2016, SIP revision, meets the requirements of section 182(a)(1) of the CAA and proposing to approve this emissions inventory into the SIP.

EPA is making the preliminary determination that the Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS based on recent air quality data and proposing to approve Tennessee's maintenance plan for its portion of the Memphis, TN–MS–AR Area as meeting the requirements of section 175A (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Memphis, TN–MS–AR Area in attainment of the 2008 8-hour ozone NAAQS through 2027. The maintenance plan includes 2027 MVEBs for NO_X and VOC for the Tennessee portion of the Memphis, TN–MS–AR Area for transportation conformity purposes. EPA is proposing to approve these MVEBs and incorporate them into the Tennessee SIP.

EPA also proposes to determine that the Tennessee portion of the Memphis, TN–MS–AR Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. Accordingly, in this action, EPA is proposing to approve a request to change the legal designation of Shelby County, as found at 40 CFR part 81, from nonattainment to attainment for the 2008 8-hour ozone NAAQS.

EPA is also notifying the public of the status of EPA's adequacy process for the 2027 NO_X and VOC MVEBs for the Tennessee portion of the Memphis, TN–MS–AR Area. The Adequacy comment period began on January 27, 2016, with EPA's posting of the availability of Tennessee's submissions on EPA's Adequacy Web site (*http://www3.epa.gov/otaq/stateresources/transconf/currsips.htm#shelby-cnty*).

The Adequacy comment period for these MVEBs closed on February 26, 2016. No comments, adverse or otherwise, were received during the Adequacy comment period. Please see section VII of this proposed rulemaking for further explanation of this process and for more details on the MVEBs.

In summary, today's notice of proposed rulemaking is in response to Tennessee's January 19, 2016, redesignation request and associated SIP submission that address the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Tennessee portion of the Memphis, TN–MS–AR Area to attainment for the 2008 8-hour ozone NAAQS.

II. What is the background for EPA's proposed actions?

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix P of part 50.

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[1] On August 27, 2015, EPA published a proposed rulemaking entitled "Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified as Marginal for the 2008 Ozone National Ambient Air Quality Standards" where the Agency has proposed to determine that the Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS by the applicable attainment date of July 20, 2015, based on 2012–2014 monitoring data. *See* 80 FR 51992. Any final action on the August 27, 2015 proposed rule will occur in a separate rulemaking from today's proposed action.

The Memphis, TN–MS–AR Area was designated nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008–2010 ambient air quality data. *See* 77 FR 30088. At the time of designation, the Memphis, TN–MS–AR Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. In the final implementation rule for the 2008 8-hour ozone NAAQS (SIP Implementation Rule),[2] EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This established an attainment date three years after the July 20, 2012, effective date for areas classified as marginal areas for the 2008 8-hour ozone nonattainment designations. Therefore, the Memphis, TN-MS-AR Area's attainment date is July 20, 2015.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the "Calcagni Memorandum");
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. "Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas," Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why is EPA proposing these actions?

On January 19, 2016, the State of Tennessee, through TDEC, requested that EPA redesignate the Tennessee portion of the Memphis, TN–MS–AR Area to attainment for the 2008 8-hour ozone NAAQS and approve the associated SIP revision submitted on the same date. EPA's evaluation indicates that the entire Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS and that the Tennessee portion of the Memphis, TN–MS–AR Area meets the requirements for redesignation as set forth in CAA section 107(d)(3)(E), including the maintenance plan requirements under CAA section 175A and associated MVEBs. Also, based on Tennessee's January 19, 2016, submittal, EPA is proposing to determine that the base year emissions inventory, included in Tennessee's January 19, 2016, submittal, meets the requirements under CAA section 182(a)(1). Approval of the base year emissions inventory is a prerequisite to redesignating an ozone nonattainment area to attainment. As a result of these proposed findings, EPA is proposing to take the four related actions summarized in section I of this notice.

V. What is EPA's analysis of the redesignation request and January 19, 2016, SIP submission?

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) Approve the 2008 8-hour ozone NAAQS base year emissions inventory for the Tennessee portion of the Area into the Tennessee SIP; (2) determine that the Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS; (3) approve the 2008 8-hour ozone NAAQS maintenance plan, including the associated MVEBs, into the Tennessee SIP; and (4) redesignate the Tennessee portion of the Memphis, TN–MS–AR Area to attainment for the 2008 8-hour ozone NAAQS.

A. Emission Inventory

Section 182(a)(1) of the CAA requires states to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in each ozone nonattainment area. The section 182(a)(1) base year emissions inventory is defined in the SIP Requirements Rule as "a comprehensive, accurate, current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the nonattainment area as required by CAA section 182(a)(1)." *See* 40 CFR 51.1100(bb). The inventory year must be selected consistent with the baseline year for an RFP plan as required by 40 CFR 51.1110(b),[3] and the inventory must include actual ozone season day emissions as defined in 40 CFR 51.1100(cc)[4] and contain data elements consistent with the detail required by 40 CFR part 51, subpart A. *See* 40 CFR 51.1115(a), (c), (e). In addition, the point source emissions included in the inventory must be reported according to the point source emissions thresholds of the Air Emissions Reporting Requirements (AERR) in 40 CFR part 51, subpart A. *See* 40 CFR 51.1115(d).

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[2] This rule, entitled Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements and published at 80 FR 12264 (March 6, 2015), addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), major new source review (NSR), emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS are revoked.

[3] 40 CFR 51.1110(b) states that "at the time of designation for the 2008 ozone NAAQS the baseline emissions inventory shall be the emissions

Tennessee selected 2011 as the year for the CAA section 182(a)(1) emissions inventory which is the year corresponding with the first triennial inventory under 40 CFR part 51, subpart A. The emissions inventory is based on data developed and submitted by TDEC and Shelby County Health Department to EPA's 2011 National Emissions Inventory (NEI), and it contains data elements consistent with the detail required by 40 CFR part 51, subpart A.[5]

Tennessee's emissions inventory for its portion of the Area provides 2011 emissions data for NO_X and VOCs for the following general source categories: Point, area, non-road mobile, and on-road mobile. A detailed discussion of the inventory development is located in Attachment VII to Tennessee's January 19, 2016, SIP submittal which is provided in the docket for this action. Table 1, below, provides a summary of the emissions inventory.

TABLE 1—2011 POINT, AREA, NON-ROAD MOBILE, AND ON-ROAD MOBILE SOURCES EMISSIONS FOR THE TENNESSEE PORTION OF THE MEMPHIS AREA

[Tons per typical summer day]

County	Point		Area *		Non-road mobile **		On-road mobile	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Shelby County	18.30	9.49	4.53	46.88	29.24	15.09	37.90	16.11

* Includes Prescribed Burning.

** Includes nonroad equipment, airports, Commercial Marine Vessels (CMVs), and locomotives.

The emissions inventory includes all anthropogenic VOC and NO_Xsources for Shelby County, Tennessee. NOx and VOC emissions were calculated for a typical summer July day, taking into account the seasonal adjustment factor for summer operations. More detail on the inventory emissions for individual sources categories is provided below and in Attachment VII to Tennessee's January 19, 2016, SIP submittal.

Point sources are large, stationary, identifiable sources of emissions that release pollutants into the atmosphere. The inventory contains point source emissions data for facilities located within Shelby County based on the Shelby County, Tennessee, Emissions Inventory Questionnaire (EIQ) which is an annual emissions inventory survey conducted by the Shelby County Health Department. Each facility was required to update the data through the EIQ with information for the requested year and return the updated data to Shelby County Health Department.

Area sources are small emission stationary sources which, due to their large number, collectively have significant emissions (*e.g.*, dry cleaners, service stations). Emissions for these sources were estimated by multiplying an emission factor by such indicators of collective emissions activity as production, number of employees, or population. These emissions were estimated at the county level. Tennessee submitted an inventory that it developed for the NEI in accordance with the AERR. Tennessee developed its inventory according to the current EPA emissions inventory guidance for area sources.[6]

On-road mobile sources include vehicles used on roads for transportation of passengers or freight. Tennessee developed its on-road emissions inventory using EPA's Motor Vehicle Emissions Simulator (MOVES) model with input data from the Memphis Metropolitan Planning Organization (MPO).[7] County level on-road modeling was conducted using county-specific vehicle population and other local data. Tennessee developed its inventory according to the current EPA emissions inventory guidance for on-road mobile sources using MOVES version 2014.

Non-road mobile sources include vehicles, engines, and equipment used for construction, agriculture, recreation, and other purposes that do not use roadways (*e.g.*, lawn mowers, construction equipment, railroad locomotives, and aircraft). Tennessee calculated emissions for most of the non-road mobile sources using EPA's NONROAD2008a model[8] and developed its non-road mobile source inventory according to the current EPA emissions inventory guidance for non-road mobile sources.[9]

For the reasons discussed above, EPA has preliminarily determined that Tennessee's emissions inventory meets the requirements under CAA section 182(a)(1) and the SIP Requirements Rule for the 2008 8-hour ozone NAAQS. Approval of Tennessee's redesignation request is contingent upon EPA's final approval of the base year emissions inventory for the 2008 8-hour ozone NAAQS.

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inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of this part. States may use an alternative baseline emissions inventory provided the state demonstrates why it is appropriate to use the alternative baseline year, and provided that the year selected is between the years 2008 to 2012."

[4] "Ozone season day emissions" is defined as "an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity." *See* 40 CFR 51.1100(cc).

[5] Data downloaded from the EPA EIS from the 2011 NEI was subjected to quality assurance procedures described under *quality assurance details* under *2011 NEI Version 1 Documentation* located at: *http://www.epa.gov/ttn/chief/net/2011inventory.html#inventorydoc.* The quality assurance and quality control procedures and measures associated with this data are outlined in the State's EPA-approved Emission Inventory Quality Assurance Project Plan.

[6] This guidance includes: *Procedures for the Preparation of Emission Inventories of Carbon Monoxide and Precursors of Ozone, Vol. 1,* EPA–450/4–91–016 (May 1991) and *Emissions Inventory Improvement Program (EIIP) Technical Report, Vol. 3, Area Sources* (Revised January 2001, updated April 2001).

[7] Tennessee used *MOVES2014 technical guidance: Using MOVES to Prepare Emission Inventories in State Implementation Plans and Transportation Conformity, EPA–420–b–15–007* (January 2015).

[8] For consistency with the NEI, Tennessee included emissions data for aircraft, locomotive, and commercial marine vessels (CMV) by county. CMV emissions for 2011 were primarily based on EPA's 2011 NEI, U.S. Corps of Engineers' 2012 Waterborne Commerce, and 2012 survey of railroad companies operating in Shelby County.

[9] This guidance includes: *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,* EPA–450/4–81–026d (December 1992).

B. Redesignation Request and Maintenance Demonstration

The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

Criteria (1)—The Memphis, TN–MS–AR Area Has Attained the 2008 8-Hour Ozone NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS. *See* CAA section 107(d)(3)(E)(i). For ozone, an area may be considered to be attaining the 2008 8-hour ozone NAAQS if it meets the 2008 8-hour ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain the NAAQS, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.075 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, appendix P, the NAAQS are attained if the design value is 0.075 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In this action, EPA is preliminarily determining that the Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS. EPA reviewed ozone monitoring data from monitoring stations in the Memphis, TN–MS–AR Area for the 2008 8-hour ozone NAAQS for 2012–2014, and the design values for each monitor in the Area are less than 0.075 ppm. These data have been quality-assured, are recorded in AQS, and indicate that the Area is attaining the 2008 8-hour ozone NAAQS. The fourth-highest 8-hour ozone values at each monitor for 2012, 2013, 2014, and the 3-year averages of these values (*i.e.*, design values), are summarized in Table 2, below.

TABLE 2—2012–2014 DESIGN VALUE CONCENTRATIONS FOR THE MEMPHIS, TN–MS–AR AREA

[ppm]

Location	Site	4th Highest 8-hour ozone value (ppm)			3-Year design values (ppm)
		2012	2013	2014	2012–2014
Shelby, TN	Frayser	0.083	0.069	0.067	0.073
Shelby, TN	Orgill Park	0.084	0.063	0.065	0.070
Shelby, TN	Shelby Farms	0.086	0.069	0.066	0.073
Crittenden, AR	Marion	0.079	0.067	0.067	0.071
DeSoto, MS	Hernando	0.075	0.065	0.067	0.069

The 3-year design value for 2012–2014 for the Memphis, TN–MS–AR Area is 0.073 ppm,[10] which meets the NAAQS. EPA has reviewed 2015 preliminary monitoring data for the Area and the preliminary data does not indicate a violation of the NAAQS.[11] In today's action, EPA is proposing to determine that the Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS. EPA will not take final action to approve the redesignation if the 3-year design value exceeds the NAAQS prior to EPA finalizing the redesignation. As discussed in more detail below, Tennessee has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criteria (2)—Tennessee Has a Fully Approved SIP Under Section 110(k) for the Tennessee Portion of the Memphis, TN–MS–AR Area; and Criteria (5)—Tennessee Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Tennessee has met all applicable SIP requirements for the Tennessee portion of the Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that Tennessee has met all applicable SIP requirements for purposes of redesignation under part D of title I of the CAA in accordance with section 107(d)(3)(E)(v) and proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii) contingent upon approval of the 182(a)(1) base year emissions inventory for the 2008 8-hour ozone NAAQS for the Tennessee portion of the Area. In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Tennessee Portion of the Memphis, TN–MS–AR Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration

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[10] The highest 3-year design value among the monitoring stations is the design value for the Area.

[11] This preliminary data is available at EPA's air data Web site: *http://aqsdr1.epa.gov/aqsweb/aqstmp/airdata/download_files.html#Daily.*

(PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 2008); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

Title I, part D, applicable SIP requirements. Section 172(c) of the CAA sets forth the basic requirements of attainment plans for nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the area's nonattainment classification. As provided in subpart 2, a marginal ozone nonattainment area, such as the Memphis, TN–MS–AR Area, must submit an emissions inventory that complies with section 172(c)(3), but the specific requirements of section 182(a) apply in lieu of the demonstration of attainment (and contingency measures) required by section 172(c). *See* 42 U.S.C. 7511a(a). A thorough discussion of the requirements contained in sections 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

Section 182(a) requirements. Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NOx emitted within the boundaries of the ozone nonattainment area. Tennessee provided an emissions inventory for the Tennessee portion of the Area to EPA in a January 19, 2016, SIP submission. Specifically, Tennessee addressed this requirement by submitting a 2011 base year emissions inventory for the Tennessee portion of the Area. EPA is proposing approval of Tennessee's 2011 base year emissions inventory in this action (see Section V.A. above). Tennessee's section 182(a)(1) inventory must be approved before EPA can take final action to approve the State's redesignation request for the Tennessee portion of the Area.

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC RACT rules that were required under section 172(b)(3) of the CAA (and related guidance) prior to the 1990 CAA amendments. The Tennessee portion of the Memphis, TN–MS–AR Area is not subject to the section 182(a)(2) RACT "fix up" because the Area was designated as nonattainment after the enactment of the 1990 CAA amendments.

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented, or was required to implement, an inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision providing for an I/M program no less stringent than that required prior to the 1990 amendments or already in the SIP at the time of the amendments, whichever is more stringent. The Tennessee portion of the Memphis, TN–MS–AR Area is not subject to the section 182(a)(2)(B) because it was designated as nonattainment after the enactment of the 1990 CAA amendments and did not have an I/M program in place for ozone prior to those amendments.

Regarding the permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Tennessee currently has a fully approved part D NSR program in place. However, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR, because PSD requirements will apply after redesignation. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." Tennessee's PSD program will become applicable in the Memphis, TN–MS–AR Area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic inventories and emissions statements. Section 182(a)(3)(A) requires states to submit a periodic inventory every three years. As discussed below in the section of this notice titled *Verification of Continued Attainment*, the State will continue to update its emissions inventory at least once every three years. Under section 182(a)(3)(B), each state with an ozone nonattainment area must submit a SIP revision requiring emissions statements to be submitted to the state by sources within that nonattainment area. Tennessee provided a SIP revision to EPA on January 5, 2015, addressing the section 182(a)(3)(B) emissions statements requirement, and on March 5, 2015, EPA published a direct final rule approving this SIP revision. *See* 80 FR 11974.

Section 176 conformity requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements[12] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Tennessee has an approved conformity SIP for the Tennessee portion of the Memphis, TN–MS–AR Area. *See* 78 FR 29027 (May 17, 2013). Thus, EPA proposes that the Tennessee portion of the Memphis, TN–MS–AR Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA contingent upon approval of the 182(a)(1) base year emissions inventory.

b. The Tennessee Portion of the Memphis, TN–MS–AR Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Tennessee SIP for the Memphis, TN–MS–AR Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation except for the 182(a)(1) base year emissions inventory. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein). Tennessee has adopted and submitted, and EPA has fully approved at various times, provisions addressing various SIP elements applicable for the ozone NAAQS. *See* 78 FR 14450 (March 6, 2013).

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. With the exception of the emissions inventory requirement, which is addressed in this action, EPA has approved all part D requirements applicable for purposes of this redesignation. As noted above, EPA has approved Tennessee's emissions statements SIP revisions under CAA section 182(a)(3)(B). *See* 80 FR 11974 (March 5, 2015).

Criteria (3)—The Air Quality Improvement in the Memphis, TN–MS–AR Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, applicable federal air pollution control regulations, and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA has preliminarily determined that Tennessee has demonstrated that the observed air quality improvement in the Memphis, TN–MS–AR Area is due to permanent and enforceable reductions in emissions resulting from federal measures and are not the result of weather conditions.[13] EPA does not have any information to suggest that the decrease in ozone concentrations in the Memphis, TN–MS–AR Area is due to unusually favorable meteorological conditions.

Federal measures enacted in recent years have resulted in permanent emission reductions. The federal measures that have been implemented include the following:

Tier 2 vehicle and fuel standards. Implementation began in 2004 and requires all passenger vehicles in any manufacturer's fleet to meet an average standard of 0.07 grams of NO_X per mile. Additionally, in January 2006, the sulfur content of gasoline was required to be on average 30 ppm which assists in lowering the NO_X emissions. EPA expects that these standards will reduce NO_X emissions from vehicles by approximately 74 percent by 2030, translating to nearly 3 million tons annually by 2030.[14] [15]

Heavy-duty gasoline and diesel highway vehicle standards. EPA issued this rule in January 2001 (66 FR 5002). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007, which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_X and VOC emissions. EPA expects that this rule will achieve a 95 percent reduction in NO_X emissions from diesel trucks and buses and will reduce NO_X emissions by 2.6 million tons by 2030 when the heavy-duty vehicle fleet is completely replaced with newer heavy-duty vehicles that comply with these emission standards.[16]

Large non-road diesel engines rule. This rule was promulgated in 2004 and was phased in between 2008 through 2014. This rule reduces the sulfur content in the nonroad diesel fuel and reduces NO_X, VOC, particulate matter, and carbon monoxide emissions. These emission reductions are federally enforceable. EPA issued this rule in June 2004, which applies to diesel engines used in industries such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent nationwide.

Nonroad spark-ignition engines and recreational engines standards. The nonroad spark-ignition and recreational engine standards, effective in July 2003, regulate NO_X, hydrocarbons, and carbon monoxide from groups of previously unregulated nonroad engines. These engine standards apply to large spark-ignition engines (*e.g.,* forklifts and airport ground service equipment), recreational vehicles (*e.g.,* off-highway motorcycles and all-terrain-vehicles), and recreational marine diesel engines sold in the United States and imported after the effective date of these standards. When all of the nonroad spark-ignition and recreational engine standards are fully implemented, an overall 72 percent reduction in hydrocarbons, 80 percent reduction in NO_X, and 56 percent reduction in carbon monoxide emissions are expected by 2020. These controls reduce ambient concentrations of ozone, carbon monoxide, and fine particulate matter.

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[12] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

[13] Tennessee compared ozone data on days with the highest 8-hour ozone maxima in 2005 and 2006 to ozone data on days of comparative weather conditions in 2012–2014. The weather parameters used in the comparison were maximum temperature, dew point depression, relative humidity, cloud cover, wind direction and wind speed. The ozone levels in 2005–2006 were considerably higher than the ozone levels during similar weather conditions in 2012–2014 indicating that emission reductions between 2006 and 2014 are the reason for the reduction in ozone levels. Details of the analysis are found in Attachment I to Tennessee's January 19, 2016, SIP submittal.

[14] EPA, Regulatory Announcement, EPA420–F–99–051 (December 1999), available at: *http://www.epa.gov/tier2/documents/f99051.pdf.*

[15] The Memphis Area MPO estimates for Shelby County alone emission reductions of 2.05 tons per day (tpd) for NO_X (a 4.7 percent reduction) and 0.54 tpd for VOCs (3 percent reduction) from 2009 to 2012. TDEC notes that this occurred when the vehicle miles traveled (VMT) increased by 9.3 percent.

[16] 66 FR 5002, 5012 (January 18, 2001).

National program for greenhouse gas (GHG) emissions and fuel economy standards. The federal GHG and fuel economy standards apply to light-duty cars and trucks in model years 2012–2016 (phase 1) and 2017–2025 (phase 2). The final standards are projected to result in an average industry fleet-wide level of 163 grams/mile of carbon dioxide which is equivalent to 54.5 miles per gallon if achieved exclusively through fuel economy improvements. The fuel economy standards result in less fuel being consumed, and therefore less NO_X emissions released.

EPA proposes to find that the improvements in air quality in the Memphis, TN–MS–AR Area are due to real, permanent and enforceable reductions in NO_X and VOC emissions resulting from the federal measures discussed above.

Criteria (4)—The Tennessee Portion of the Memphis, TN–MS–AR Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Tennessee portion of the Memphis, TN–MS–AR Area to attainment for the 2008 8-hour ozone NAAQS, TDEC submitted a SIP revision to provide for the maintenance of the 2008 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA has made the preliminary determination that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the remainder of the 20-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 2008 8-hour ozone violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA has preliminarily determined that Tennessee's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Tennessee SIP.

b. Attainment Emissions Inventory

As discussed above, EPA is proposing to determine that the Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS based on quality-assured monitoring data for the 3-year period from 2012–2014, and is continuing to attain the standard based on preliminary 2015 data. Tennessee selected 2012 as the base year (*i.e.*, attainment emissions inventory year) for developing a comprehensive emissions inventory for NO_X and VOC, for which projected emissions could be developed for 2017, 2020, and 2027. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 2008 8-hour ozone NAAQS. Tennessee began development of the attainment inventory by first generating a baseline emissions inventory for the State's portion of the Memphis, TN–MS–AR Area. The State projected summer day emission inventories using projected rates of growth in population, traffic, economic activity, and other parameters. In addition to comparing the final year of the plan (2027) to the base year (2012), Tennessee compared interim years to the baseline to demonstrate that these years are also expected to show continued maintenance of the 2008 8-hour ozone standard.

The emissions inventory is composed of four major types of sources: Point, area, on-road mobile, and non-road mobile. Complete descriptions of how the State developed these inventories are located in Attachment I of the January 19, 2016, SIP submittal.

Point source emissions are tabulated from data collected by direct on-site measurements of emissions or from mass balance calculations utilizing approved emission factors. The 2012 base year inventory contains point source emissions data for facilities located within Shelby County. Each facility was required to update the data through the EIQ with information for the requested year and return the updated data to Shelby County Health Department. The point source emissions inventory for Shelby County is located in the docket for today's action. For each projected year's inventory for 2017, 2020, and 2027, the State projected point source emissions using growth factors developed from the United States Department of Energy's 2014 Annual Energy Outlook (AEO) projections and the University of Tennessee, Data Center 2014 Econometric Model Forecast. A conservative value of 1 was substituted for all negative growth factors. Growth factors used for this analysis include fuel consumption, employment, and population changes.

Emissions for area sources were estimated by multiplying an emission factor by such indicators of collective emissions activity as production, number of employees, or population. These emissions were estimated at the county level. Tennessee used a similar method to that used to develop the 2011 emissions inventory. For each projected year's inventory, emission factors are used to determine area source emissions. Tennessee developed its inventory according to the current EPA emissions inventory guidance for area sources.[17]

Tennessee developed its 2012 on-road emissions inventory using EPA's MOVES2014 model with input data from the MPO.[18] County level on-road modeling was conducted using county-specific vehicle population and other local data. Tennessee developed its inventory according to the current EPA emissions inventory guidance for on-road mobile sources using MOVES2014. The MOVES2014 model includes the VMT as an input file and can directly output the estimated emissions. For each projected year's inventory,

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[17] This guidance includes: *Procedures for the Preparation of Emission Inventories of Carbon Monoxide and Precursors of Ozone, Vol. 1*, EPA–450/4–91–016 (May 1991) and *Emissions Inventory Improvement Program (EIIP) Technical Report, Vol. 3, Area Sources* (Revised January 2001, updated April 2001).

[18] Tennessee used *MOVES2014 technical guidance: Using MOVES to Prepare Emission Inventories in State Implementation Plans and Transportation Conformity, EPA–420–b–15–007* (January 2015).

Tennessee calculated the on-road mobile sources emissions by running the MOVES mobile model for the future year with the projected VMT to generate emissions that take into consideration expected federal tailpipe standards, fleet turnover, and new fuels.

Non-road mobile sources include non-road equipment, airport, commercial marine vessels, and locomotives. The majority of the non-road mobile emissions in the U.S. are from the non-road equipment segment (*i.e.*, agricultural equipment, construction equipment, lawn and garden equipment, and recreational vehicles, such as boats and jet-skis). Tennessee calculated emissions for most of the non-road mobile sources using EPA's NONROAD2008a model within EPA's MOVES2014 model and developed its non-road mobile source inventory according to the current EPA emissions inventory guidance for non-road mobile sources.[19]

c. Maintenance Demonstration

The maintenance plan associated with the redesignation request includes a maintenance demonstration that:

(i) Shows compliance with and maintenance of the 2008 8-hour ozone NAAQS by providing information to support the demonstration that current and future emissions of NO_X and VOC remain at or below 2012 emissions levels.

(ii) Uses 2012 as the attainment year and includes future emissions inventory projections for 2017, 2020, and 2027.

(iii) Identifies an "out year" at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO_X and VOC MVEBs were established for the last year (2027) of the maintenance plan (see section VI below).

(iv) Provides actual (2012) and projected emissions inventories, in tons per summer day (tpsd), for the Tennessee portion of the Memphis, TN–MS–AR Area, as shown in Tables 3 and 4, below.

TABLE 3—ACTUAL AND PROJECTED AVERAGE SUMMER DAY NO_X EMISSIONS (TPD) FOR THE TENNESSEE PORTION OF THE MEMPHIS, TN–MS–AR AREA

Sector	2012	2017	2020	2027
Point	13.87	13.45	8.34	8.43
Area	4.11	4.18	4.24	4.33
Non-road	35.93	32.09	30.57	29.77
On-road	61.56	31.30	22.42	12.51
Total	115.47	81.01	65.56	55.05

TABLE 4—ACTUAL AND PROJECTED AVERAGE SUMMER DAY VOC EMISSIONS (TPD) FOR THE TENNESSEE PORTION OF THE MEMPHIS, TN–MS–AR AREA

Sector	2012	2017	2020	2027
Point	9.30	6.64	6.22	6.24
Area	44.04	45.33	45.53	46.30
Non-road	28.44	21.32	19.76	19.33
On-road	19.01	11.22	8.75	5.81
Total	100.79	84.51	80.26	77.69

Tables 3 and 4 summarize the 2012 and future projected emissions of NO_X and VOC from the Tennessee portion of the Memphis, TN–MS–AR Area. In situations where local emissions are the primary contributor to nonattainment, such as the Memphis, TN–MS–AR Area if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the related ambient air quality standard should not be exceeded in the future. Tennessee has projected emissions as described previously and determined that emissions in the Tennessee portion of the Memphis, TN–MS–AR Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed in section VI of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Tennessee selected 2012 as the attainment emissions inventory year for the Tennessee portion of the Memphis, TN–MS–AR Area. Tennessee calculated safety margins in its submittal for 2027. The State has allocated a portion of the 2027 safety margin to the 2027 MVEBs for the Memphis, TN–MS–AR Area.

TABLE 5—SAFETY MARGINS FOR THE TENNESSEE PORTION OF THE MEMPHIS, TN–MS–AR AREA

Year	VOC (tpd)	NO_X (tpd)
2027	23.10	60.42

The State has decided to allocate a portion of the available safety margin to the 2027 MVEBs to allow for unanticipated growth in VMT, changes and uncertainty in vehicle mix assumptions, etc., that will influence the emission estimations. Tennessee has allocated 49.04 tpd of the NO_X safety margin to the 2027 NO_X MVEB and 13.19 tpd of the VOC safety margin to the 2027 VOC MVEB. After allocation of the available safety margin, the remaining safety margin is 11.38 tpd for

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[19] This guidance includes: *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,* EPA–450/4–81–026d (December 1992).

NO$_X$ and 9.91 tpd for VOC. This allocation and the resulting available safety margin for the Tennessee portion of the Memphis, TN–MS–AR Area are discussed further in section VI of this proposed rulemaking along with the MVEBs to be used for transportation conformity proposes.

d. Monitoring Network

There currently are five monitors measuring ozone in the Memphis, TN–MS–AR Area, of which three are in the Tennessee portion of the Memphis, TN–MS–AR Area. Tennessee has committed to continue operation of the monitors in the Tennessee portion of the Memphis, TN–MS–AR Area in compliance with 40 CFR part 58 and has thus addressed the requirement for monitoring. Arkansas and Mississippi have made similar commitments in their maintenance plans. EPA approved Tennessee's monitoring plan on October 26, 2015. EPA approved Arkansas' monitoring plan on November 16, 2015, and approved Mississippi's monitoring plan on October 6, 2015.

e. Verification of Continued Attainment

TDEC has the legal authority to enforce and implement the maintenance plan for the Tennessee portion of the Area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Additionally, under the AERR, TDEC is required to develop a comprehensive, annual, statewide emissions inventory every three years that is due twelve to eighteen months after the completion of the inventory year. Tennessee will update the AERR inventory every three years beginning no later than the 2015 emission season and will use the updated emissions inventory to track progress of the maintenance plan.

f. Contingency Measures in the Maintenance Plan

Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the January 19, 2016, submittal, Tennessee commits to continuing existing programs and commits to implement programs and measures depending upon emission inventory and air quality monitoring results. The contingency plan included in the submittal includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures.

The primary trigger is activated when emissions or ambient air monitoring data indicates possible future ozone levels violating the 2008 8-hour ozone NAAQS but an actual violation of the 2008 8-hour ozone NAAQS has not yet occurred. This will occur if the certified triennial emissions inventory of VOCs or NO$_X$ (summer season tons per day) exceeds the 2012 base year attainment inventory by ten percent or more and any area monitor has recorded at least one exceedance of the ozone NAAQS according to certified data during the most recent monitoring season. The Shelby County Health Department will then conduct an investigation lasting no longer than three months into the possible causes. The results will be reported to EPA and TDEC. If the data is valid and not due to unusual circumstances, the Shelby County Health Department will seek to expand voluntary programs[20] and develop regulations as appropriate following consultation with EPA and TDEC. Proof of regulation adoption will be sent to EPA within nine months and implementation of regulations will occur within 18 to 24 months after monitoring data is certified. Possible contingency measures include, but are not limited to:

○ Programs or incentives to decrease motor vehicle use;

○ Programs to require additional emissions reductions on stationary sources;

○ Restrictions of certain roads or lanes for, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles;

○ Employer-based transportation incentive plans; and

○ Additional programs for new construction of paths for use by pedestrian or non-motorized vehicles when economically feasible and in the public interest.

The secondary trigger is a violation of the 2008 8-hour ozone NAAQS (*i.e.*, when the three-year average of the 4th highest values is equal to or greater than 0.076 ppm at a monitor in the Area). The trigger date will be when a monitored violation of the 2008 ozone NAAQS occurs in the nonattainment area according to certified data during the most recent monitoring season. The Shelby County Health Department will then conduct an investigation lasting no longer than three months into the possible causes. The results will be reported to TDEC and EPA. If the data is valid, further action is required, and the Shelby County Health Department will seek to expand voluntary programs and develop regulations for submission to the Shelby County Commission or Tennessee State Air Board. Proof of adoption of such regulations will be submitted to EPA within nine months after the end of the investigation. Control measures will be implemented within 18 to 24 months after verification of a monitored violation by certified data. In addition to the measures stated for the primary trigger, the following measures may also be implemented if there is a secondary trigger of a violation of the standard:

○ A RACT regulation for legacy major sources of NO$_X$ emissions in Shelby County; and

○ Adoption of all industrial and commercial VOC controls as provided in final EPA-approved Control Technology Guidelines through the date of the recorded violation.

EPA preliminarily concludes that the maintenance plan adequately addresses the five basic components of a maintenance plan: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Therefore, EPA proposes to find that the maintenance plan SIP revision submitted by Tennessee for the State's portion of the Area meets the requirements of section 175A of the CAA and is approvable.

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[20] If the State adopts a voluntary emission reduction measure as a contingency measure necessary to attain or maintain the NAAQS, EPA will evaluate approvability in accordance with relevant Agency guidance regarding the incorporation of voluntary measures into SIPs. *See, e.g.*, Memorandum from Richard D. Wilson, Acting Administrator for Air and Radiation, to EPA Regional Administrators re: Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Plans (SIPs) (October 24, 1997); EPA, Office of Air and Radiation, Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP) (September 2004).

VI. What is EPA's analysis of Tennessee's proposed NO_X and VOC MVEBs for the Tennessee portion of the area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must "conform" to (*i.e.,* be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration requirements) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Memphis TN–MS–AR Area, Tennessee has developed MVEBs for NO_X and VOC for the Tennessee portion of the Area. Tennessee developed these MVEBs, as required, for the last year of its maintenance plan, 2027. The 2027 MVEBs reflect the total projected on-road emissions for 2027, plus an allocation from the available NO_X and VOC safety margins. Under 40 CFR 93.101, the term "safety margin" is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NO_X and VOC MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled, and new emission factor models. The NO_X and VOC MVEBs for the Tennessee portion of the Area are identified in Table 6, below.

TABLE 6—TENNESSEE PORTION OF THE AREA NO_X AND VOC MVEBS (TPD)*

	2027
NO_X Base Emissions	12.51
NO_X Safety Margin Allocated to MVEB	49.04
NO_X MVEB	61.56
VOC Base Emissions	5.81
VOC Safety Margin Allocated to MVEB	13.19
VOC MVEB	19.01

*The MVEBs do not total the sum of the base emissions and safety margins due to rounding convention.

As mentioned above, Tennessee has chosen to allocate a portion of the available safety margin to the NO_X and VOC MVEBs for the Tennessee portion of the Area. This allocation is 49.04 tpd and 13.19 tpd for NO_X and VOC, respectively. Thus, the remaining safety margins for 2027 are 11.38 tpd and 9.91 tpd NO_X and VOC, respectively.

Through this rulemaking, EPA is proposing to approve the MVEBs for NO_X and VOC for 2027 for the Tennessee Portion of the Area because EPA has preliminarily determined that the Area maintains the 2008 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Tennessee Portion of the Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations.

VII. What is the status of EPA's adequacy determination for the proposed NO_X and VOC MVEBs for the Tennessee portion of the area?

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Tennessee's maintenance plan includes NO_X and VOC MVEBs for the Tennessee portion of the Memphis TN–MS–AR Area for 2027, the last year of the maintenance plan. EPA reviewed the NO_X and VOC MVEBs through the adequacy process. The NO_X and VOC MVEBs for the Tennessee portion of the area were open for public comment on EPA's adequacy Web site on January 27, 2016, found at: *http://www3.epa.gov/otaq/stateresources/transconf/currsips.htm#shelby-cnty.* The EPA public comment period on adequacy for the 2027 MVEBs for the Tennessee portion of the Area closed on February

26, 2016, and no comments, adverse or otherwise, were received.

EPA intends to make its determination on the adequacy of the 2027 MVEBs for the Tennessee portion of the Area for transportation conformity purposes in the near future by completing the adequacy process that was started on January 27, 2016. After EPA finds the 2027 MVEBs adequate or approves them, the new MVEBs for NO_X and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years for 2027 and beyond, the applicable budgets will be the new 2027 MVEBs established in the maintenance plan.

VIII. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Tennessee's redesignation request would change the legal designation of Shelby County, Tennessee, in the Memphis TN–MS–AR Area, found at 40 CFR part 81, from nonattainment to attainment for the 2008 8-hour ozone NAAQS. Approval of Tennessee's associated SIP revision would also incorporate a plan for maintaining the 2008 8-hour ozone NAAQS in the Tennessee portion of the Area through 2027 and a section 182(a)(1) base year emissions inventory into the Tennessee SIP for the Area. The maintenance plan establishes NO_X and VOC MVEBs for 2027 for the Tennessee portion of the Area and includes contingency measures to remedy any future violations of the 2008 8-hour ozone NAAQS and procedures for evaluation of potential violations. Additionally, EPA is notifying the public of the status of EPA's adequacy determination for the newly-established NO_X and VOC MVEBs for 2027 for the Tennessee portion of the Area.

IX. Proposed Actions

EPA is proposing to take four separate but related actions regarding the redesignation request and associated SIP revision for the Tennessee portion of the Memphis TN–MS–AR Area for the 2008 8-hour ozone NAAQS. First, EPA is proposing to approve Tennessee's section 182(a)(1) base year emissions inventory for the 2008 8-hour ozone standard for the Tennessee portion of the Area into the SIP.

Second, EPA is proposing to determine that the Memphis, TN–MS–AR Area has attained the 2008 8-hour ozone NAAQS based on complete, quality-assured and certified monitoring data for the 2012–2014 monitoring period. Preliminary 2015 data in AQS indicates that the Area is continuing to attain the 2008 8-hour ozone NAAQS.

Third, EPA is proposing to approve the maintenance plan for the Tennessee portion of the Area, including the NO_X and VOC MVEBs for 2027, into the Tennessee SIP (under CAA section 175A). The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS.

Finally, EPA is proposing to approve Tennessee's redesignation request for the 2008 8-hour ozone NAAQS for the Tennessee portion of the Area contingent upon approval of the 182(a)(1) base year emissions inventory for the Tennessee portion of the Area.

As part of today's action, EPA is also describing the status of its adequacy determination for the NO_X and VOC MVEBs for 2027 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

If finalized, approval of the redesignation request would change the official designation of Shelby County, Tennessee in the Tennessee portion of the Memphis TN–MS–AR Area for the 2008 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

X. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 8, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–08796 Filed 4–18–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 10

RIN 0906–AA89

340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary Penalties Regulation; Reopening of Comment Period

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: This document reopens the comment period for the June 17, 2015, proposed rule entitled "340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary Penalties Regulation." The comment period for the proposed rule, which ended on August 17, 2015, is reopened for 30 days.

DATES: The comment period for the proposed rule published on June 17, 2015 (80 FR 34583), is reopened and ends on May 19, 2016.

ADDRESSES: In commenting, please refer to the Regulatory Information Number (RIN) 0906–AA89, by any of the following methods. Please submit your comments in only one of these ways to minimize the receipt of duplicate submissions. The first is the preferred method.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments. This is the preferred method for the submission of comments.
- *Email: 340BCMPNPRM@hrsa.gov.* Include 0906–AA89 in the subject line of the message.
- *Mail:* Office of Pharmacy Affairs (OPA), Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Mail Stop 08W05A, Rockville, MD 20857.

All submitted comments will be available to the public in their entirety.

FOR FURTHER INFORMATION CONTACT: CAPT Krista Pedley, Director, OPA, HSB, HRSA, 5600 Fishers Lane, Mail Stop 08W05A, Rockville, MD 20857, or by telephone at 301–594–4353.

SUPPLEMENTARY INFORMATION: On June 17, 2015, the Department of Health and Human Services (HHS) published a proposed rule in the **Federal Register** (80 FR 34583) entitled, "340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary Penalties Regulation" that would set forth the calculation of the ceiling price and application of civil monetary penalties for section 340B of the Public Health Service Act (PHSA), which is referred to as the "340B Drug Pricing Program" or the "340B Program." In light of the comments received, HHS is reopening the comment period for 30 days for the purpose of inviting public comments on several specific areas, summarized below. Comments may be submitted on any aspect of the proposed rule, not just those areas specifically addressed below. Commenters do not need to resubmit comments previously submitted, as all previous comments are currently under review and will be considered prior to the finalization of the proposed rule.

Ceiling Price for a Covered Outpatient Drug Exception

In the June 17, 2015, notice of proposed rulemaking (80 FR 34583), HHS proposed that when the calculation of the 340B ceiling price resulted in an amount less than $0.01, the ceiling price would be $0.01 per unit of measure (hereinafter, penny pricing). In the notice of proposed rulemaking (NPRM), we recognized that it was not reasonable for a manufacturer to set the ceiling price at $0.00 per unit of measure. HHS received a number of comments supporting and opposing the penny pricing proposal.

Commenters suggested a number of alternatives to penny pricing, including: The federal ceiling price, the most recent positive ceiling price from previous quarters, and nominal sales price. Some commenters stated that the federal ceiling price, which is the basis for prices paid by certain federal government programs, would be a viable alternative. Other commenters suggested that charging a ceiling price from previous quarters in which the ceiling price was greater than $0.00 would be reasonable. Finally, several commenters suggested that nominal pricing, which is a term used in the Medicaid Drug Rebate Program, would be more appropriate. Other commenters suggested that manufacturers should be able to utilize any other reasonable alternative.

Given these comments, HHS is considering whether any of these alternatives or other alternatives not raised by the commenters, alone or in combination, would be more appropriate than the penny pricing proposal and whether to revise the proposed regulatory text in 42 CFR 10.10(b). As the NPRM did not indicate that alternatives to the penny pricing proposal would be considered, and given the number of comments on this issue, HHS is reopening the comment period specifically to invite comments on whether we should adopt an alternative policy to penny pricing. By reopening the comment period as to this specific issue, all parties will have an opportunity to express their views on penny pricing and other alternatives prior to finalization of the proposed rule.

New Drug Price Estimation

In the NPRM, HHS proposed that manufacturers estimate the ceiling price for a new covered outpatient drug as of the date the drug is first available for sale, and provide HRSA an estimated ceiling price for each of the first three quarters the drug is available for sale. HHS also proposed that, beginning with the fourth quarter the drug is available for sale, the manufacturer must calculate the ceiling price as described in proposed 42 CFR 10.10(a). Under the proposed rule, the actual ceiling price for the first three quarters must also be calculated and manufacturers would be required to provide a refund or credit to any covered entity which purchased the covered outpatient drug at a price greater than the calculated ceiling price. HHS proposed that any refunds or credits owed to a covered entity must be provided by the end of the fourth quarter. HHS received numerous comments supporting and opposing the various components of its proposal on new drug price estimation.

Several commenters supported a specific methodology for calculating new drug prices, which included setting the price of the new covered outpatient drug as wholesale acquisition cost (WAC) minus the applicable rebate percentage (*i.e.*, 23.1 percent for most single-source and innovator drugs, 17.1 percent for clotting factors and drugs approved exclusively for pediatric indications, and 13 percent for generics and OTCs). Commenters argued that this price would eliminate the need to estimate the price for the first three quarters and would result in a reasonable ceiling price. We are seeking comment on this specific methodology for the estimation of a new covered outpatient drug pricing and at which quarter a manufacturer should refund or credit a covered entity if there is an overcharge.

Definition of "Knowing and Intentional"

Under section 340B(d)(1)(B)(vi) of the Public Health Service Act, the Secretary is charged with issuing civil monetary penalties for manufacturers who have "knowingly and intentionally" charged a covered entity a price that exceeds the 340B ceiling price. Although the knowing and intentional standard was included in the NPRM issued on June 17, 2015, "knowing and intentional" was not specifically defined. HHS received a number of comments urging HHS to further define these terms. Through this reopening of the NPRM comment period, we are seeking comment on the definition of the knowing and intentional standard for purposes of this civil monetary penalty authority. We believe that, by reopening the comment period as to this issue, all parties will have an opportunity to express their views on this definitional standard prior to finalization of the rule.

HHS is considering whether "knowing and intentional" should be further defined. If the terms are defined, possible definitions could be: (1) Actual knowledge by the manufacturer, its employees, or its agents of the instance of overcharge; (2) willful or purposeful acts by, or on behalf of, the manufacturer that lead to the instance of overcharge; (3) acting consciously and with awareness of the acts leading to the instance of overcharge; and/or (4) acting with a conscious desire or purpose to cause an overcharge or acting in a way practically certain to result in an overcharge. Manufacturers do not need to intend specifically to violate the 340B statute; but rather to have knowingly and intentionally overcharged the 340B covered entity.

HHS understands that this is difficult to demonstrate. As such, HHS is soliciting input on circumstances in which the requisite intent should and should not be inferred. In particular, HHS would like to solicit comment on the concept that manufacturers would not be considered to have the requisite intent in the following circumstances:

- The manufacturer made an inadvertent, unintentional, or unrecognized error in calculating the ceiling price;
- A manufacturer acted on a reasonable interpretation of agency guidance; or
- When a manufacturer has established alternative allocation procedures where there is an inadequate supply of product to meet market demand, as long as covered entities are able to purchase on the same terms as all other similarly-situated providers.

HHS welcomes comments regarding other situations where the requisite intent may or may not be demonstrated.

Because of the scope of the proposed rule, and since we have specifically requested the public's comments on various aspects of the rule, we believe that it is important to allow ample time for the public to consider these approaches to these specific policies in the proposed rule. Therefore, we have decided to reopen the comment period for an additional 30 days. HHS believes that a 30-day period is sufficient and balances the interests of encouraging public participation in the rulemaking process with the desire to not unnecessarily delay key decisions about rulemaking. This document announces the reopening of the comment period to end May 19, 2016.

Dated: April 6, 2016.

James Macrae,

Acting Administrator, Health Resources and Services Administration.

Approved: April 12, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–09017 Filed 4–18–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2012–0097; 4500030114]

RIN 1018–AZ74

Endangered and Threatened Wildlife and Plants; Proposed Rule To Amend the Listing of the Southern Selkirk Mountains Population of Woodland Caribou

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our May 8, 2014, proposed rule to amend the listing of the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) by defining the Southern Mountain Caribou distinct population segment (DPS) and listing it as threatened. In the May 8, 2014, proposed rule, we also proposed to reaffirm our November 28, 2012, final designation of critical habitat for the southern Selkirk Mountains population of woodland caribou as critical habitat for the proposed Southern Mountain Caribou DPS. On March 23, 2015, the U.S. District Court of Idaho remanded our November 28, 2012, final critical habitat rule to the Service to correct a procedural error by providing another opportunity for public comment. This reopening of the comment period will provide all interested parties with the opportunity to provide comment on our November 28, 2012, final critical habitat designation, in light of the court's ruling.

DATES: The comment period for the proposed rule published in the **Federal Register** on May 8, 2014 (79 FR 26504), is reopened. We will consider comments received or postmarked on or before May 19, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES:

Document availability: You may obtain information and documents associated with the opening of this comment period, a copy of the November 28, 2012, final critical habitat designation (77 FR 71042), as well as information relating to the proposed reaffirmation of critical habitat in the proposed amended listing rule (79 FR 26504, May 8, 2014) and any comments received on that rule at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2012–0097, or by contacting the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Information we relied upon for making our November 28, 2012, final critical habitat designation (77 FR 71042) can be found at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2011–0096 and Docket No. FWS–R1–ES–2012–0097, or by contacting the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R1–ES–2012–0097, which is the docket number for this rulemaking. Then, click the Search button. In the Search panel on the left side of the

screen, under the Document Type heading, click on the box next to "Proposed Rule" to locate this document. You may submit a comment by clicking on "Comment Now!" Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0097; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Requested section below, for more information).

FOR FURTHER INFORMATION CONTACT: Dennis Mackey, Acting State Supervisor, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho (telephone 208–378–5243; facsimile 208–378–5262). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 2011, we proposed to designate approximately 375,562 acres (ac) (151,985 hectares (ha)) of critical habitat for the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) (76 FR 74018). On November 28, 2012, after considering comments we received from peer reviewers as well as from Federal agencies, State agencies, Tribes, and the general public on the proposed designation, we designated approximately 30,010 ac (12,145 ha) of critical habitat for the southern Selkirk Mountains population of woodland caribou (77 FR 71042).

On May 8, 2014, we proposed to amend the current listing of the southern Selkirk Mountains population of woodland caribou by defining the Southern Mountain Caribou DPS, which includes the currently listed southern Selkirk Mountains population of woodland caribou, as well as populations of mountain caribou in British Columbia (79 FR 26504), and listing the DPS as threatened. In the May 8, 2014, rule, we also proposed to reaffirm the approximately 30,010 ac (12,145 ha) designated as critical habitat on November 28, 2012 (77 FR 71042), for the southern Selkirk Mountains population of woodland caribou as critical habitat for the proposed Southern Mountain Caribou DPS. As we stated in our May 8, 2014, proposed rule (79 FR 26532), our regulations at 50 CFR 424.12(h) allow us to designate critical habitat only in the United States. Of the 15 populations of mountain caribou that make up the Southern Mountain caribou DPS, the southern Selkirk Mountains woodland caribou population is the only population that moves freely between the coterminous United States and Canada. We determined that critical habitat for the Southern Mountain caribou DPS corresponded exactly to the critical habitat identified for the southern Selkirk Mountains population of woodland caribou in our final rule published on November 28, 2012 (77 FR 71042). Further we determined that the specific area identified in the November 28, 2012, final rule met the definition of critical habitat for the Southern Mountain caribou DPS, and that there are no additional areas that meet the definition of critical habitat.

The May 8, 2014, proposed rule (79 FR 26504) had a 60-day public comment period, ending July 7, 2014. On June 10, 2014, we extended the public comment period an additional 30 days, ending on August 6, 2014, and announced the scheduling of two public hearings, which were held on June 25, 2014, and June 26, 2014 (79 FR 33169). On March 24, 2015, we reopened the public comment period for an additional 30 days, ending on April 23, 2015, to allow the public time to review new information received after the previous public comment period (80 FR 15545).

On March 23, 2015, the U.S. District Court for the District of Idaho ruled in *Center for Biological Diversity* v. *Kelly*, 93 F. Supp. 3d 1193 (D. Idaho, 2015), that we made a procedural error in not providing for public review and comment on certain aspects of the reasoning that we relied upon in making our November 28, 2012, final designation of critical habitat (77 FR 71042). The reopening of this comment period will provide all interested parties an opportunity to provide comment on the November 28, 2012, final designation of critical habitat, which we proposed to reaffirm in the May 8, 2014, proposed rule as the critical habitat for the Southern Mountain caribou DPS.

The primary factors that we considered in making changes from the November 30, 2011, proposed critical habitat designation (76 FR 74018) to the November 28, 2012, final critical habitat designation (77 FR 71042), which we proposed to reaffirm in the May 8, 2014, proposed rule include:

(1) A revised determination of the geographical area occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing, based on comments we received, including those from peer reviewers, which caused us to reevaluate surveys conducted by Scott and Servheen (1984, 1985).

(2) Census monitoring that documented low numbers of individual caribou observed in the United States during those annual surveys.

(3) Caribou observations within the United States for several years that have consistently been limited to areas close to the United States-Canada border.

(4) Peer review comments received leading to a reanalysis of the appropriate elevational limit of critical habitat (see Kinley and Apps (2007)).

(5) Information and literature reporting the overall decline of the subspecies mountain caribou (*Rangifer tarandus caribou*) across its range, and in particular the decline of woodland caribou populations in the southern extent of their range, including the southern Selkirk Mountains population of woodland caribou.

(6) The applicability as well as the status of the recovery objectives identified in the 1994 Selkirk Mountains Woodland Caribou Recovery Plan (USFWS 1994).

(7) Information on areas currently conserved and managed for the conservation of woodland caribou in the Selkirk Mountains in British Columbia, Canada, as described in The Nature Conservancy (2011) and the 2009 update on the Mountain Caribou Recovery Implementation Plan provided to the Mountain Caribou Progress Board (DeGroot 2012, pers comm.) (see also MCRIP 2009). All documents cited above can be viewed on *www.regulations.gov* in the supplemental materials for Docket No. FWS–R1–ES–2012–0097.

Information Requested

We intend that any final action will be based on the best scientific data available, and be as accurate and complete as possible. Therefore, we are seeking written comments and information from appropriate Federal and State agencies, the scientific community, and any other interested party during this reopened comment period on our proposed rule that was published in the May 8, 2014, **Federal Register** (79 FR 26504). We are particularly interested in comments and information related to our November 28, 2012, final critical habitat designation, which we have proposed to reaffirm as critical habitat for the Southern

Mountain caribou DPS. This information will be used to finalize the critical habitat designation for the Southern Mountain caribou DPS.

If you submitted comments or information on the proposed reaffirmation of the November 28, 2012, designation of critical habitat in the proposed amended listing rule (79 FR 26504, Docket No. FWS–R1–ES–2012–0097) during the initial comment period from May 8, 2014, to July 6, 2014, the extended comment period (79 FR 33169) from July 6, 2014, to August 6, 2014, or the additional comment period (80 FR 15545) from March 24, 2015, to April 23, 2015, please do not resubmit them. We have incorporated them into the public record as part of this comment period, and we will fully consider them in our final determination.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(2) of the Act directs that critical habitat determinations must be made "on the basis of the best scientific data available."

You may submit your comments and materials concerning the May 8, 2014, proposed rule (79 FR 26504) by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as some supporting documentation we used in preparing the November 28, 2012, final critical habitat rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2012–0097, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 5, 2016.

Noah Matson,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–08617 Filed 4–18–16; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 81, No. 75
Tuesday, April 19, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Outreach

Minority Farmers and Ranchers Advisory Committee

AGENCY: Office of Advocacy and Outreach, USDA.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Office of Advocacy and Outreach (OAO) is announcing a meeting of the Minority Farmers and Ranchers Advisory Committee's (MFAC). The committee is being convened to consider issues involving minorities. The members will deliberate on recommendations to be prepared for USDA Secretarial consideration.

DATES: The committee meeting is scheduled for Tuesday, May 10, 2016, at 1:00 p.m.–5:00 p.m. CST; and Wednesday, May 11, 2016, 9:00 a.m.–5:00 p.m. CST; and, Thursday, May 12, 2016, from 9:00 a.m.–5:00 p.m. CST. The meeting will be open to the public. All persons wishing to make comments during this meeting must check in between 1:00 p.m. and 2:00 p.m. CST each day at the registration table. All public commenters will be allowed a maximum of five minutes. If the number of registrants requesting to speak is greater than what can be reasonably accommodated during the scheduled open public meeting timeframe, speakers will be scheduled on a first-come basis. Public written comments for the committee's consideration may be submitted by close of business on May 6, 2016, to Mrs. Kenya Nicholas, Designated Federal Official, USDA OAO, 1400 Independence Avenue SW., Room 520–A, Washington, DC 20250–0170, Phone (202) 720–6350, Fax (202) 720–7704, Email: *acmf@osec.usda.gov.* A listen-only line will be available during the entire meeting for all who wish to listen to the meeting or make public comments through the following telephone number: (888) 455–1685 and enter passcode 4225205. Members of the public may also submit written comments for consideration to the committee.

ADDRESSES: This public advisory committee meeting will be held at the Renaissance New Orleans Arts Hotel, 700 Tchoupitoulas Street, New Orleans, LA, 70130–3612, (504) 613–2330. There will also be signs directing attendees to the USDA meeting rooms.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Phyllis Morgan, Executive Assistant, OAO, 1400 Independence Ave. SW., Whitten Bldg., 520–A, Washington, DC 20250, Phone: (202) 720–6350, Fax: (202) 720–7136, email: *Phyllis.Morgan@osec.usda.gov.*

SUPPLEMENTARY INFORMATION: The Secretary tasked the MFAC with providing recommendations on access to USDA programs and services by minority farmers and ranchers. Please visit our Web site at: *http://www.outreach.usda.gov/sdfr/FAC.htm* for additional information on the MFAC.

The public is asked to pre-register for the meeting by midnight May 4, 2016. You may pre-register for the public meeting by submitting an email to *acmf@osec.usda.gov* with your name, organization or affiliation, or any comments for the committee's consideration. You may also fax this information to (202) 720–7704. Members of the public who wish to make comments during the committee meeting must register at the check-in table.

The agenda is as follows: Day 1: Committee discussions (International Trade Opportunities and Sustainability of Renewable Energy), USDA presentations and public comments;

Day 2: Committee discussions, public comments. Day 3: Committee deliberations and public comment. Please visit the Minority Farmers and Ranchers Advisory Committee Web site for the full agenda. All agenda topics and documents will be made available to the public prior to the meeting at: *http://www.outreach.usda.gov/sdfr/FAC.htm.* Copies of the agenda will also be distributed at the meeting.

Meeting Accommodations: USDA is committed to ensuring that everyone is accommodated in our work environment, programs, and events. If you are a person with a disability and request reasonable accommodations to participate in this meeting, please note the request in your registration and you may contact Mrs. Kenya Nicholas in advance of the meeting by or before close of business on May 4, 2016, by phone at (202) 720–6350, fax (202) 720–7704, or email: *kenya.nicholas@osec.usda.gov.*

Issued in Washington, DC, this 13th day of April 2016.

Christian Obineme,

Associate Director, Office of Advocacy and Outreach.

[FR Doc. 2016–08932 Filed 4–18–16; 8:45 am]

BILLING CODE 3412–89–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Reinstate an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek reinstatement of an information collection, the 2017 Census of Agriculture.

DATES: Comments on this notice must be received by June 20, 2016 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0226, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *E-fax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: R. Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690–2388 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: The 2017 Census of Agriculture.

OMB Control Number: 0535–0226.

Expiration Date of Previous Approval: October 31, 2014.

Type of Request: Intent to Seek Reinstatement of an Information Collection.

Abstract: The census of agriculture is the primary source of statistics concerning the nation's agricultural industry. It provides the only basis of consistent, comparable data for each county, county equivalent, and state in the United States and its outlying insular areas. The census is conducted every 5 years, the last one being for the reference year of 2012. The 2017 Census of Agriculture will again cover all agricultural operations in the 50 states, Puerto Rico, Guam, the U.S. Virgin Islands, the Commonwealth of Northern Mariana Islands (CNMI), and American Samoa which meet the census definition for a farm. For the 50 states, Guam, and CNMI, a farm is any place that produced and sold, or normally would produce and sell, $1,000 or more of agricultural products during the census reference year. For Puerto Rico and the U.S. Virgin Islands it is any place with $500 in production and sales. American Samoa is not limited by a threshold for production or sales and includes items grown for home consumption.

Data collection for the censuses of agriculture for the 50 states and Puerto Rico will be conducted primarily by mail-out/mail-back procedures (US Postal Service), internet, and with phone and field enumeration for targeted non-respondents. Data collection for Guam, the U.S. Virgin Islands, CNMI, and American Samoa will be conducted using direct enumeration methods only. For the 50 states, respondents will be contacted up to 5 times by mail (postcard announcement, 3 mailings of the questionnaire and internet access instruction, and a postcard reminder) and additional telephone or personal interview follow-up for mail and internet non-respondents. Questionnaires returned by the Post Office as non-deliverable will be removed from the target population and subsequent mailings. Respondents who contact one of our phone centers to notify NASS of their farming status or to complete a questionnaire will also be removed from any subsequent mailings. In the summer of 2015, NASS conducted cognitive interviews of proposed changes to the 2017 Census of Agriculture using the Generic Testing docket (0535–0248). In December 2015 NASS began testing the 2017 Census of Agriculture and will continue testing through September 2017, using the Census Content Testing docket (0535–0243).

Two census of agriculture questionnaire versions will be used for the 50 states. One version will be shorter and will be sent to farm operations known to not have certain commodities or farming practices. A longer form will be used for the remaining farming operations. NASS is working to increase the speed and ease at which any respondent may fill out the form by incorporating improved screening questions in the internet version of the questionnaire that automatically skips questions that do not apply to a particular respondent. This reduces overall respondent burden, particularly for small operations and operations specializing in only a few commodities. A screening survey, conducted prior to the census, will enable NASS to eliminate non-farm operations from the census mail list and determine respondent eligibility for receiving the appropriate census mail package.

The census of agriculture is required by law under the "Census of Agriculture Act of 1997," Public Law 105–113, 7 U.S.C. 2204(g). Response to the screening form, the census of agriculture and the census special study surveys are mandatory. The census special study surveys will be included under different OMB approvals. Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362. The law guarantees farm operators that their individual information will be kept confidential. NASS uses the information only for statistical purposes and publishes only tabulated total data. These data are used by Congress when developing or changing farm programs. Many national and state programs are designed or allocated based on census data, *i.e.,* soil conservation projects, funds for cooperative extension programs, and research funding. Private industry uses the data to provide more effective production and distribution systems for the agricultural community.

Estimate of Burden: Public reporting burden for this collection of information will average about 50 minutes per census long form, 45 minutes per census short form, 15 minutes per screening form, and 2 minutes per refusal from all sources.

Respondents: Farm and ranch operators.

Estimated Number of Respondents: 3,950,000.

Estimated Total Annual Burden on Respondents: 2,900,000 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 6, 2016.

R. Renee Picanso,

Associate Administrator.

[FR Doc. 2016–08950 Filed 4–18–16; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Thursday May 19, 2016, from 8:30 a.m. to 4:00 p.m. Eastern Standard Time.

DATES: The meeting will be held Thursday, May 19, 2016, from 8:30 a.m. to 4:00 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the Charleston Marriott Hotel, 170 Lockwood Blvd. Charleston, SC 29403. Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Zara Brunner, Manufacturing Extension Partnership, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–2001, email: *zara.brunner@nist.gov.*

SUPPLEMENTARY INFORMATION: The MEP Advisory Board (Board) is authorized under Section 3003(d) of the America COMPETES Act (Pub. L. 110–69); codified at 15 U.S.C. 278k(e), as amended, in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Board is composed of 10 members, appointed by the Director of NIST. Hollings MEP is a unique program, consisting of centers across the United States and Puerto Rico with partnerships at the state, federal, and local levels. The Board provides a forum for input and guidance from Hollings MEP program stakeholders in the formulation and implementation of tools and services focused on supporting and growing the U.S. manufacturing industry, provides advice on MEP programs, plans, and policies, assesses the soundness of MEP plans and strategies, and assesses current performance against MEP program plans. Background information on the Board is available at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the MEP Advisory Board will hold an open meeting on Thursday, May 19, 2016, from 8:30 a.m. to 4:00 p.m. Eastern Standard Time. This meeting will focus on several topics. The Board will receive an update on NIST MEP programmatic operations, as well as provide guidance and advice to MEP senior management for the drafting of the 2017–2022 Strategic Plan. The Board will also provide input on developing protocols to connect user facilities, research, and technologies at NIST and other federal laboratories with small and mid-size manufacturers, and make recommendations on the establishment of an MEP Learning Organization, an effort to strengthen connections by sharing best practices and building Working Groups and Communities of Practice for furtherance of the MEP Program's mission. The final agenda will be posted on the MEP Advisory Board Web site at *http://www.nist.gov/mep/about/advisory-board.cfm.* This is meeting is being held in conjunction with the MEP Update Meeting that will be held May 17–18, 2016 also at the Charleston Marriott.

Admittance Instructions: Anyone wishing to attend the MEP Advisory Board meeting should submit their name, email address and phone number to Monica Claussen (*monica.claussen@nist.gov* or 301–975–4852) no later than Monday, May 9, 2016, 5:00 p.m. Eastern Time.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received but is likely to be no more than three to five minutes each. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board Web site as *http://www.nist.gov/mep/about/advisory-board.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the MEP Advisory Board, National Institute of Standards and Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 4800, Gaithersburg, Maryland 20899–4800, or via fax at (301) 963–6556, or electronically by email to *zara.brunner@nist.gov.*

Phillip Singerman,

Associate Director for Innovations and Industry Services.

[FR Doc. 2016–08933 Filed 4–18–16; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE572

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Ecosystem and Ocean Planning Advisory Panel (AP) will hold a public meeting.

DATES: The meeting will be held on Wednesday, May 11, 2016, from 10 a.m. to 4:30 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 7491–A New Ridge Road, Hanover, MD, (410) 878–7200.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Agenda

The MAFMC's Ecosystem and Ocean Planning Advisory Panel (AP) will meet to provide input to the Council on the development of written Council policy on fishing activities that may impact fish habitat. The development of written policy on these activities are intended to enable the Council to work more effectively to address fish habitat and ecosystem issues in our region.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 14, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–08971 Filed 4–18–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Cooperation Treaty

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Act of 1996, Public Law 104–13 (44 U.S.C 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@upsto.gov.* Include "0651–021 comment" in the subject line of the message.
- *Federal Register Portal: http://www.regulations.gov.*
- *Mail:* Marcie Lovett, Records Management Division Director, Office of the Chief Information Officer; United States Patent and Trademark Office; P.O. Box 1450, Alexandria, VA 22313–1450

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Rafael Bacares, Senior Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria VA 22313–1450; by telephone at 571–272–3276; or by email at *Rafael.Bacares@uspto.gov* with "Paperwork" in the subject line. Additional information about this collection is also available at *http://www.reginfo.gov* under "Information Collection Review."

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the provisions of the Patent Cooperation Treaty (PCT), which became operational in June 1978 and is administered by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. The provisions of the PCT have been implemented by the United States in part IV of title 35 of the U.S. Code (chapters 35–37) and subpart C of title 37 of the Code of Federal Regulations (37 CFR 1.401–1.499). The purpose of the PCT is to provide a standardized filing format and procedure that allows an applicant to seek protection for an invention in several countries by filing one international application in one location, in one language, and paying one initial set of fees.

The information in this collection is used by the public to submit a patent application under the PCT and by the United States Patent and Trademark Office (USPTO) to fulfill its obligation to process, search, and examine the application as directed by the treaty. The USPTO acts as the United States Receiving Office (RO/US) for international applications filed by residents and nationals of the United States. These applicants send most of the correspondence directly to the USPTO, but they may also file certain documents directly with the IB. The USPTO serves as an International Searching Authority (ISA) to perform searches and issue international search reports (ISR) and the written opinions on international applications. The USPTO also issues international preliminary reports on patentability (IPRP Chapter II) when acting as an International Preliminary Examining Authority (IPEA).

II. Method of Collection

By mail, hand delivery, or electronic submission to the USPTO.

III. Data

OMB Number: 0651–0021.

IC Instruments and Forms: The individual instruments in this collection, as well as their associated forms, are listed in the table below.

Type of Review: Revision of a Previously Existing Information Collection.

Affected Public: Individuals or households; business or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 423,970 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public between 0.25 hours (15 minutes) and 8 hours to gather the necessary information, prepare the appropriate form or documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 364,830 hours.

Estimated Total Annual Respondent (Hourly) Cost Burden: $149,380,300. The USPTO expects that attorneys will complete these applications. The current professional hourly rate for attorneys is $410.00. Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is $149,380,300 per year.

IC No.	Item	Estimated time for response (hr) (a)	Estimated annual responses (b)	Estimated annual burden hours (a) × (b) = (c)	Rate ($/hr) (d)	Total cost burden ($/hr) (c) × (d) = (e)
1	Request and Fee Calculation Sheet (Annex and Notes) (PCT/RO/101).	1	56,480	56,480	$410.00	$23,156,800.00
2	Description/claims/drawings/abstracts.	3	56,480	169,480	410.00	69,470,400.00
3	Application Data Sheet (35 U.S.C. 371 applications).	0.38 (23 minutes)	91,477	34,761	410.00	14,252,010.00
4	Transmittal Letter to the United States Receiving Office (RO/US) (PTO–1382).	0.25 (15 minutes)	50,832	12,708	410.00	5,210,280.00
5	Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission Under 35 U.S.C. 371 (PTO–1390).	0.25 (15 minutes)	85,387	21,347	410.00	8,752,270.00
6	PCT/Model of Power of Attorney	0.25 (15 minutes)	2,824	706	410.00	289,460.00
7	PCT/Model of General Power of Attorney.	0.25 (15 minutes)	282	71	410.00	29,110.00

IC No.	Item	Estimated time for response (hr) (a)	Estimated annual responses (b)	Estimated annual burden hours (a) × (b) = (c)	Rate ($/hr) (d)	Total cost burden ($/hr) (c) × (d) = (e)
8	Indications Relating to a Deposited Microorganism (PCT/RO/134).	0.25 15 minutes)	1	0	410.00	0.00
9	Response to invitation to correct defects.	2	15,117	30,234	410.00	12,395,940.00
10	Request for rectification of obvious errors.	0.50 (30 minutes)	867	434	410.00	177,940.00
11	Demand and Fee Calculation Sheet (Annex and Notes) (PCT/IPEA/401).	1	1,406	1,406	410.00	576,460.00
12	Amendments (Article 34)	1	1,406	1,406	410.00	576,460.00
13	Fee Authorization	0.25 (15 minutes)	50,832	12,708	410.00	5,210,280.00
14	Requests to transmit copies of international application.	0.25 (15 minutes)	1,081	270	410.00	110,700.00
15	Withdrawal of international application (PCT/IB/372).	0.25 (15 minutes)	1,580	395	410.00	161,950.00
16	Translations	2	2,298	4,596	410.00	1,884,360.00
17	Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(a) (PTO/SB/64/PCT).	1	887	887	410.00	363,670.00
18	Petitions to the Commissioner for international applications.	4	133	532	410.00	218,120.00
19	Petitions to the Commissioner in national stage examination.	4	3,191	12,764	410.00	5,233,240.00
20	Acceptance of an unintentionally delayed claim for priority (37 CFR 1.78(a)(3)).	2	542	1,084	410.00	444,440.00
21	Request for the restoration of the right of priority.	3	867	2,601	410.00	1,066,410.00
Totals			423,970	364,830		149,580,300.00

Estimated Total Annual (Non-hour) Respondent Cost Burden: $305,509,626.10. This collection has annual (non-hour) costs in the form of translations, drawings, filing fees, and postage costs.

Translations and Drawings

Under the terms of the PCT, the USPTO may require documents submitted for a PCT application to be translated into English when necessary. This requirement may carry additional costs for the applicant to contract for a translation of the documents in questions. The USPTO believes that the average length of the document to be translated will be 10 pages and that it will cost approximately $150 per page for the translation, for an average translation cost of $1,500 per document. The USPTO estimates that it receives approximately 21,180 English translations annually, for a total of $31,770,000 per year for English translations of non-English language documents for PCT applications.

Applicants may also incur costs for drawings that are submitted as part of PCT applications. Some applicants may produce their own drawings, while others may contract out the work to various patent illustration firms. For the purpose of estimating burden for this collection, the USPTO will consider all applicants to have their drawings prepared by these firms. The USPTO estimates that drawings may cost an average of $58 per sheet to produce and that on average 11 sheets of drawings are submitted per application, for an average total cost of $638 to produce a set of drawings for an application. The USPTO expects that approximately 91% of the estimated 48,285 applications per year will have drawings filed with them, for a total of 43,939 sets of drawings with a total cost of $28,033,082 per year.

Filing Fee

The estimated filing fees for this collection are calculated in the accompanying table.

IC No.	Item	Responses (a)	Fees (b)	Total fee amount (a) × (b) = (c)
	Request and Fee Calculation Sheet (Annex and Notes) (PCT/RO/101)	56,480	$1,254.00	$70,825,920.00
	Demand and Fee Calculation Sheet (Annex and Notes) (PCT/IPEA/401)	1,406	213.00	299,478.00
	Acceptance of an unintentionally delayed claim for priority, or for filing a request for the restoration of the right of priority.	1,409	2,000.00	2,818,000.00
	Basic National Stage Fee (Large entity)	65,948	300.00	19,784,400.00
	Basic National Stage Fee (Small entity)	19,893	150.00	2,983,950.00
	Basic National Stage Fee (Micro entity)	1,197	75.00	89,775.00

IC No.	Item	Responses (a)	Fees (b)	Total fee amount (a) × (b) = (c)
	National Stage Search Fee—U.S. was the ISA or IPEA and all claims satisfy PCT Article 33(1)–(4).	452	0	0.00
	National Stage Search Fee—U.S. was the ISA (Large entity)	2,728	140.00	381,920.00
	National Stage Search Fee—U.S. was the ISA (Small entity)	2,918	70.00	204,260.00
	National Stage Search Fee—U.S. was the ISA (Micro entity)	206	35.00	7,210.00
	National Stage Search Fee—search report prepared and provided to USPTO (Large entity).	60,196	520.00	31,301,920.00
	National Stage Search Fee—search report prepared and provided to USPTO (Small entity).	15,917	260.00	4,138,420.00
	National Stage Search Fee—search report prepared and provided to USPTO (Micro entity).	866	130.00	112,580.00
	National Stage Examination Fee—U.S. was the ISA or IPEA and all claims satisfy PCT Article 33(1)–(4).	452	0	0.00
	Transmitting application to Intl. Bureau to act as receiving office (Large entity).	313	240.00	75,120.00
	Transmitting application to Intl. Bureau to act as receiving office (Small entity).	191	120.00	22,920.00
	Transmitting application to Intl. Bureau to act as receiving office (Micro entity).	21	60.00	1,260.00
	National Stage Search Fee—all other situations (Large entity)	2,864	660.00	1,890,240.00
	National Stage Search Fee—all other situations (Small entity)	908	330.00	299,640.00
	National Stage Search Fee—all other situations (Micro entity)	118	165.00	19,470
	National Stage Examination Fee—all other situations (Large entity)	65,701	760.00	49,932,760.00
	National Stage Examination Fee—all other situations (Small entity)	19,653	380.00	7,468,140.00
	National Stage Examination Fee—all other situations (Micro entity)	1,171	190.00	222,490.00
	Search fee, examination fee or oath of declaration after thirty months from priority date (Large entity).	23,193	140.00	3,247,020.00
	Search fee, examination fee or oath of declaration after thirty months from priority date (Small entity).	10,149	70.00	710,430.00
	Search fee, examination fee or oath of declaration after thirty months from priority date (Micro entity).	304	35.00	10,640.00
	English translation after thirty months from priority date (Large entity)	1,467	140.00	205,380.00
	English translation after thirty months from priority date (Small entity)	782	70.00	54,740.00
	English translation after thirty months from priority date (Micro entity)	49	35.00	1,715.00
	Transmittal fee (Large entity)	39,370	240.00	9,448,800.00
	Transmittal fee (Small entity)	16,017	120.00	1,922,040.00
	Transmittal fee (Micro entity)	1,240	60.00	74,400.00
	Search fee—regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16) (Large entity).	8,227	2,080.00	17,112,160.00
	Search fee—regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16) (Small entity).	10,929	1,040.00	11,366,160.00
	Search fee—regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16) (Micro entity).	1,129	520.00	587,080.00
	Supplemental search fee when required, per additional invention	1	2,080.00	2,080.00
	Preliminary examination fee—U.S. was the ISA (Large entity)	346	600.00	207,600.00
	Preliminary examination fee—U.S. was the ISA (Small entity)	257	300.00	77,100.00
	Preliminary examination fee—U.S. was the ISA (Micro entity)	54	150.00	8,100.00
	Preliminary examination fee—U.S. was not the ISA (Large entity)	143	760.00	108,680.00
	Preliminary examination fee—U.S. was not the ISA (Small entity)	31	380.00	11,780.00
	Preliminary examination fee—U.S. was not the ISA (Micro entity)	1	190.00	190.00
	Supplemental examination fee per additional invention (Large entity)	0	600.00	0.00
	Supplemental examination fee per additional invention (Small entity)	4	300.00	1,200.00
	Supplemental examination fee per additional invention (Micro entity)	0	150.00	0.00
	National Stage Application Size Fee—for each additional 50 sheets that exceed 100 sheets (Large entity).	2,325	400.00	930,000.00
	National Stage Application Size Fee—for each additional 50 sheets that exceed 100 sheets (Small entity).	1,181	200.00	236,200.00
	National Stage Application Size Fee—for each additional 50 sheets that exceed 100 sheets (Micro entity).	36	100.00	3,600.00
	[PCT National Stage] Claims—extra independent (over three) (Large entity)	7,565	460.00	3,479,900.00
	[PCT National Stage] Claims—extra independent (over three) (Small entity)	2,650	230.00	609,500.00
	[PCT National Stage] Claims—extra independent (over three) (Micro entity)	122	115.00	14,030.00
	[PCT National Stage] Claims—extra total (over 20) (Large entity)	10,797	100.00	1,079,700.00
	[PCT National Stage] Claims—extra total (over 20) (Small entity)	5,574	50.00	278,700.00
	[PCT National Stage] Claims—extra total (over 20) (Micro entity)	241	25.00	60,250.00
	[PCT National Stage] Claim—multiple dependent (Large entity)	986	820.00	808,520.00
	[PCT National Stage] Claim—multiple dependent (Small entity)	522	410.00	214,020.00
	[PCT National Stage] Claim—multiple dependent (Large entity)	42	205.00	8,610.00
Totals		466,522		245,700,473.00

Postage Costs

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents and that up to 12,390 submissions (approximately 2% of responses) will be mailed to the USPTO per year, for a total estimated postage cost of $6,071.10 per year.

The total annual (non-hour) respondent cost burden for this collection associated with translations, drawings, fees, and postage is estimated to be $310,789,891.10 per year.

IV. Request for Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 13, 2016.

Joseph Rivera,

Office of Information Management Services Deputy Director, USPTO, Office of the Chief Information Officer.

[FR Doc. 2016–09037 Filed 4–18–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive Patent License; CelerAscent, LLC

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. The Department of the Navy hereby gives notice of its intent to grant to CelerAscent, LLC, a revocable, nonassignable, partially exclusive license to practice in the United States, the Government-owned invention described below:

U.S. Patent Application 62/156,092 (Navy Case 200115): Filed May 1, 2015, entitled "PHOTONIC HYBRID RECEIVE ANTENNA."

DATES: Anyone wishing to object to the grant of this license has fifteen days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div., Code OOL, Bldg. 2, 300 Highway 361, Crane, IN 47522–5001, telephone 812–854–4100.

Authority: 35 U.S.C. 207, 37 CFR part 404

Dated: April 13, 2016.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–09009 Filed 4–18–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice, as is necessary, to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the internal procedures of Marine Corps University. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Thursday, May 12, 2016, from 8:00 a.m. to 4:30 p.m. and Friday, May 13, 2016, from 8:00 a.m. to 1130 a.m.

ADDRESSES: The meeting will be held at Marine Corps University in Quantico, Virginia. The address is: 2076 South St, Quantico, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Kim Florich, Director of Faculty Development and Outreach, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703–432–4682.

Dated: April 13, 2016.

N. A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–09011 Filed 4–18–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanics

AGENCY: White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the eleventh meeting of the President's Advisory Commission on Educational Excellence for Hispanics (Commission). The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and intended to notify the public of its opportunity to attend. In order to accommodate additional members of the public, the meeting venue was changed and therefore this notice is being posted in the **Federal Register** less than 15 days from the meeting date.

DATES: The President's Advisory Commission on Educational Excellence for Hispanics meeting will be held on Thursday, April 28, 2016 from 8:30 a.m.–2:45 p.m. Pacific Daylight Time.

ADDRESSES: California State University, Fullerton, Titan Student Union, Pavilion A, 800 N State College Blvd., Fullerton, CA 92831, 213–804–6185.

FOR FURTHER INFORMATION CONTACT: Emmanuel Caudillo, Senior Advisor, White House Initiative on Educational Excellence for Hispanics, 400 Maryland Ave. SW., Room 4W108, Washington, DC 20202; telephone: 202–401–1411.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanics Statutory Authority: The President's Advisory Commission on Educational Excellence for Hispanics (the Commission) is established by Executive Order 13555 (Oct. 19, 2010; continued on September 30, 2015 by Executive Order 13708). The Commission is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Commission is to advise the President and the Secretary of Education on all matters pertaining to the education attainment of the Hispanic community.

The Commission shall advise the President and the Secretary in the following areas: (i) Developing, implementing, and coordinating educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics of all ages; (ii) increasing the participation of the Hispanic community and Hispanic-Serving Institutions in the Department's programs and in education programs at other agencies; (iii) engaging the philanthropic, business, nonprofit, and education communities in a national dialogue regarding the mission and objectives of this order; (iv) establishing partnerships with public, private, philanthropic, and nonprofit stakeholders to meet the mission and policy objectives of this order.

Individuals who wish to attend the Commission meeting must RSVP by 12 noon EDT, Friday, April 22nd, 2016, to *WHIEEH@ed.gov.*

An opportunity for public comment will be available on Thursday, April 28, 2016, from 2:00 p.m. to 2:30 p.m., PDT. Individuals who wish to provide comments will be allowed three minutes to speak. Members of the public can sign up to provide comments at the meeting via email at *WHIEEH@ed.gov* and also the day-of the meeting. It is first come, first serve. Those members of the public interested in submitting written comments may do so by submitting them to the attention of Emmanuel Caudillo, White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave. SW., Room 4W108, Washington, DC 20202, by Friday, April 22, 2016 or via email at *WHIEEH@ed.gov.*

Meeting Agenda

The open meeting will facilitate a discussion on the Commission's 2016 activities, including updates on the Administration's education priorities and proposed outreach and engagement efforts.

Detailed Meeting Agenda

Full Board Meeting: Session: 8:30 a.m.–10:40 a.m.; Open Session 11:30 a.m.–2:45 p.m.

Breakout Sessions:

Early Learning: Open Session 10:50 a.m.–11:20 a.m.

K-12 Education: Open Session: 10:50 a.m.–11:20 a.m.

Postsecondary Education: Open Session: 10:50 a.m.–11:20 a.m.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Commission's Web site 90 days after the meeting. Pursuant to the FACA, the public may also inspect the materials at 400 Maryland Avenue SW., Washington, DC, by emailing *Emmanuel.Caudillo@ed.gov* or by calling (202) 401–1411 to schedule an appointment.

Reasonable Accommodations: Individuals who will need accommodations in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify Emmanuel Caudillo, Senior Advisor, White House Initiative on Educational Excellence for Hispanics at 202–401–1411, no later than Friday, April 22nd, 2016. We will attempt to meet requests for such accommodations after this date, but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Executive Order 13555; continued by Executive Order 13708.

Ted Mitchell,

Under Secretary, U.S. Department of Education.

[FR Doc. 2016–08997 Filed 4–18–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–828–000.
Applicants: SG Resources Mississippi, L.L.C.
Description: Section 4(d) Rate Filing: SG Resources Mississippi, L.L.C.—Filing of Housekeeping Tariff Changes to be effective 5/7/2016.
Filed Date: 4/7/16.
Accession Number: 20160407–5143.
Comments Due: 5 p.m. ET 4/19/16.

Docket Numbers: RP16–829–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Section 4(d) Rate Filing: Revised Hourly Nomination Deadline to be effective 5/7/2016.
Filed Date: 4/7/16.
Accession Number: 20160407–5169.
Comments Due: 5 p.m. ET 4/19/16.

Docket Numbers: RP16–830–000.
Applicants: Enable Mississippi River Transmission, L.
Description: Section 4(d) Rate Filing: Negotiated Rate Filing to Amend LER 5680's Attachment A_4_7_16 to be effective 4/7/2016.
Filed Date: 4/7/16.
Accession Number: 20160407–5205.
Comments Due: 5 p.m. ET 4/19/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–567–001.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: Compliance filing NAESB Version 3.0 Compliance to Order No. 587–W—Revised Sheet 313A to be effective 4/1/2016.
Filed Date: 4/7/16.
Accession Number: 20160407–5168.
Comments Due: 5 p.m. ET 4/19/16.

Docket Numbers: RP16–413–001.
Applicants: Granite State Gas Transmission, Inc.
Description: Compliance filing Compliance filing for March 29th Order to be effective 4/1/2016.

Filed Date: 4/8/16.
Accession Number: 20160408–5137.
Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: RP16–439–001.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: Compliance filing NAESB 3.0 Compliance Filing to be effective 4/1/2016.
Filed Date: 4/8/16.
Accession Number: 20160408–5091.
Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: RP16–489–001.
Applicants: East Tennessee Natural Gas, LLC.
Description: Compliance filing ETNG RP16–489–000 Compliance Filing to be effective 4/1/2016.
Filed Date: 4/8/16.
Accession Number: 20160408–5110.
Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: RP16–490–001.
Applicants: Egan Hub Storage, LLC.
Description: Compliance filing Egan RP16–490–000 Compliance Filing to be effective 4/1/2016.
Filed Date: 4/8/16.
Accession Number: 20160408–5119.
Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: RP16–491–001.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Compliance filing OGT RP16–491–000 Compliance Filing to be effective 4/1/2016.
Filed Date: 4/8/16.
Accession Number: 20160408–5121.
Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: RP16–493–001.
Applicants: Saltville Gas Storage Company L.L.C.
Description: Compliance filing SGSC RP16–493–000 Compliance Filing to be effective 4/1/2016.
Filed Date: 4/8/16.
Accession Number: 20160408–5122.
Comments Due: 5 p.m. ET 4/20/16.

Docket Numbers: RP16–505–002.
Applicants: Portland General Electric Company.
Description: Compliance filing NAESB V3 Standards Compliance Final Filing to be effective 4/1/2016.
Filed Date: 4/8/16.
Accession Number: 20160408–5157.
Comments Due: 5 p.m. ET 4/20/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 11, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–08924 Filed 4–18–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–831–000.
Applicants: Alliance Pipeline L.P.
Description: Section 4(d) Rate Filing: Daily Service Apr 9–30 2016 to be effective 4/9/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5095.
Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–832–000.
Applicants: Alliance Pipeline L.P.
Description: Compliance filing NAESB 3.0 Compliance Filing to be effective 4/1/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5096.
Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–833–000.
Applicants: Alliance Pipeline L.P.
Description: Section4(d) Rate Filing: Correct Sheet No. 18 to be effective 2/1/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5128.
Comments Due: 5 p.m. ET 4/25/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–412–001.
Applicants: Golden Triangle Storage, Inc.
Description: Compliance filing GTS. Compliance Filing Pursuant to Order in Dkt. No. RP16–412–000 to be effective 4/1/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5245.
Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–476–001.
Applicants: Northern Natural Gas Company.
Description: Compliance filing 20160411. Compliance Filing to be effective 4/1/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5179.
Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–509–001.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing Texas Eastern RP16–509. Compliance Filing to be effective 4/1/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5088.
Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–513–001.
Applicants: Steckman Ridge, LP.
Description: Compliance filing Steckman Ridge RP16–513. Compliance Filing to be effective 4/1/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5089.
Comments Due: 5 p.m. ET 4/25/16.

Docket Numbers: RP16–514–001.
Applicants: Big Sandy Pipeline, LLC.
Description: Compliance filing Big Sandy RP16–514. Compliance Filing to be effective 4/1/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5090.
Comments Due: 5 p.m. ET 4/25/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 12, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–08925 Filed 4–18–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7891–000]

Gross, Scott I.; Notice of Filing

Take notice that on April 13, 2016, Scott I. Gross submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act (FPA), 16 U.S.C. 825d(b), Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45, and Order No. 664.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 4, 2016.

Dated: April 13, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–08965 Filed 4–18–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–100–000.

Applicants: Citigroup Renewable Investments 1, LLC, San Juan Mesa Wind Project, LLC.

Description: Section 203 Application of Citigroup Renewable Investments 1, LLC and San Juan Mesa Wind Project, LLC.

Filed Date: 4/12/16.

Accession Number: 20160412–5181.

Comments Due: 5 p.m. ET 5/3/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2400–006.

Applicants: Blue Canyon Windpower LLC.

Description: Supplement to December 31, 2015 Updated Market Power Analysis for the Southwest Power Pool Region of Blue Canyon Windpower LLC.

Filed Date: 4/12/16.

Accession Number: 20160412–5214.

Comments Due: 5 p.m. ET 5/3/16.

Docket Numbers: ER15–572–005.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: NY Transco compliance formula rate protocols/template, TOTS cost allocation to be effective 4/3/2015.

Filed Date: 4/12/16.

Accession Number: 20160412–5274.

Comments Due: 5 p.m. ET 5/3/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08923 Filed 4–18–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–82–000.

Applicants: Lakewood Cogeneration, LP, Essential Power Rock Springs, LLC, Essential Power OPP, LLC, Essential Power Newington, LLC, Essential Power Massachusetts, LLC, Essential Power, LLC, Nautilus Generation, LLC.

Description: Supplement (updated Exhibit JRS–8) to February 25, 2016 Application for Authorization for Disposition of Jurisdictional Facilities of Essential Power, LLC, et al.

Filed Date: 4/12/16.

Accession Number: 20160412–5334.

Comments Due: 5 p.m. ET 4/22/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3576–013; ER11–3401–012.

Applicants: Golden Spread Electric Cooperative, Inc., Golden Spread Panhandle Wind Ranch, LLC.

Description: Notice of Non-material Change in Status of Golden Spread Electric Cooperative, Inc., et al.

Filed Date: 4/13/16.

Accession Number: 20160413–5152.

Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER15–2453–001; ER13–1489–008; ER13–1488–006.

Applicants: Passadumkeag Windpark, LLC, Quantum Lake Power, LP, Quantum Pasco Power, LP.

Description: Notice of Non-Material Change in Status of the Quantum Entities.

Filed Date: 4/13/16.

Accession Number: 20160413–5153.

Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER15–2568–003.

Applicants: Duke Energy Progress, LLC.

Description: Compliance filing: Name Change Filing Compliance Filing to be effective 11/1/2015.

Filed Date: 4/13/16.

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[1] *Commission Authorization to Hold Interlocking Positions,* 112 FERC ¶ 61,298 (2005) (Order No. 664); *order on reh'g,* 114 FERC ¶ 61,142 (2006) (Order No. 664–A).

Accession Number: 20160413–5068.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–40–002.
Applicants: Nevada Power Company.
Description: Compliance filing: OATT Supplement to Attachment O with 792 additions and EIM to be effective 11/1/2014.
Filed Date: 4/13/16.
Accession Number: 20160413–5208.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–139–002.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Compliance Filing in ER16–139—Revisions to Attachment W to Update GFAs to be effective 1/1/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5086.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–521–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–04–12_Attachment Y align to PRA Compliance Filing to be effective 2/12/2016.
Filed Date: 4/12/16.
Accession Number: 20160412–5293.
Comments Due: 5 p.m. ET 5/3/16.

Docket Numbers: ER16–1387–000.
Applicants: South Carolina Electric & Gas Company.
Description: Section 205(d) Rate Filing: Winnsboro PSA FERC Filing to be effective 4/11/2016.
Filed Date: 4/12/16.
Accession Number: 20160412–5277.
Comments Due: 5 p.m. ET 5/3/16.

Docket Numbers: ER16–1388–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: 2016 Revised Added Facilities Rate under WDAT 1 to be effective 1/1/2016.
Filed Date: 4/12/16.
Accession Number: 20160412–5281.
Comments Due: 5 p.m. ET 5/3/16.

Docket Numbers: ER16–1389–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Original Service Agreement No. 4446; Queue AB1–095 (WMPA) to be effective 3/23/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5075.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1390–000.
Applicants: Southwest Power Pool, Inc.
Description: Notice of Cancellation of Generator Interconnection Agreement of Southwest Power Pool, Inc.
Filed Date: 4/13/16.
Accession Number: 20160413–5116.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1391–000.
Applicants: Duquesne Light Company.
Description: Section 205(d) Rate Filing: Revised Tariff 2016 Normal to be effective 6/13/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5130.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1392–000.
Applicants: Duquesne Power, LLC.
Description: Section 205(d) Rate Filing: Revised Tariff 2016 Normal to be effective 6/13/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5131.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1393–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: Filing to Modify Retail Standby Rate Design in SCE's Formula Transmission Rate to be effective 6/13/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5147.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1394–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: 2016 Revised Added Facilities Rate under WDAT—Filing No. 3 to be effective 1/1/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5174.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1395–000.
Applicants: PacifiCorp.
Description: Tariff Cancellation: Termination of Pavant Solar III E&P Agreement to be effective 6/20/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5190.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1396–000.
Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Dominion submits revisions to Att H–16C re: Other Post-Employment Benefits to be effective 6/12/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5213.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1397–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: 2016 Revised Added Facilities Rate under WDAT—Filing No. 2 to be effective 1/1/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5224.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1398–000.
Applicants: Provision Power & Gas, LLC.
Description: Baseline eTariff Filing: Market-Based Rates Tariff to be effective 5/1/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5237.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1399–000.
Applicants: Solar Star California XLI, LLC.
Description: Baseline eTariff Filing: Shared Facilities Agreement, FERC Electric Rate Schedule No. 1 to be effective 4/14/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5239.
Comments Due: 5 p.m. ET 5/4/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–27–000.
Applicants: Orange and Rockland Utilities, Inc.
Description: Application of Orange and Rockland Utilities, Inc. under ES16–27 for an order pursuant to Section 204 of the Federal Power Act authorizing the issue of short-term debt.
Filed Date: 4/13/16.
Accession Number: 20160413–5151.
Comments Due: 5 p.m. ET 5/4/16.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–19–012; OA07–43–013; ER07–1171–013.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits its annual compliance report on penalty assessments and distributions in OA07–19, et al.
Filed Date: 4/13/16.
Accession Number: 20160413–5173.
Comments Due: 5 p.m. ET 5/4/16.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF16–716–000.
Applicants: NRG HQ DG LLC.
Description: Form 556 of NRG HQ DG LLC.
Filed Date: 4/13/16.
Accession Number: 20160413–5121.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 13, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–08964 Filed 4–18–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–99–000.
Applicants: Westar Energy, Inc.
Description: Application for Authorization for Consolidation of Jurisdictional Facilities and Request for Expedited Action and Certain Waivers of Westar Energy, Inc.
Filed Date: 4/12/16.
Accession Number: 20160412–5112.
Comments Due: 5 p.m. ET 5/3/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1379–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–04–11_SA 2914 Northern States Power-Ashtabula Wind IV FCA (C019) to be effective 4/12/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5260.
Comments Due: 5 p.m. ET 5/2/16.

Docket Numbers: ER16–1380–000.
Applicants: Rocky Mountain Reserve Group.
Description: Tariff Cancellation: RMRG Cancellation 20160411 to be effective 4/14/2016.
Filed Date: 4/11/16.
Accession Number: 20160411–5279.
Comments Due: 5 p.m. ET 5/2/16.

Docket Numbers: ER16–1381–000.
Applicants: Nevada Power Company.
Description: Initial rate filing: Rate Schedule No. 152 NPC and MGM EPC Agreement to be effective 4/13/2016.
Filed Date: 4/12/16.
Accession Number: 20160412–5005.
Comments Due: 5 p.m. ET 5/3/16.

Docket Numbers: ER16–1382–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–04–12_SA 2916 Prairie Power-Prairie Power GIA (J291) to be effective 4/13/2016.
Filed Date: 4/12/16.
Accession Number: 20160412–5075.
Comments Due: 5 p.m. ET 5/3/16.

Docket Numbers: ER16–1383–000.
Applicants: Southwest Power Pool, Inc.
Description: Section 205(d) Rate Filing: 3193 Rush County Wind Farm GIA to be effective 3/22/2016.
Filed Date: 4/12/16.
Accession Number: 20160412–5115.
Comments Due: 5 p.m. ET 5/3/16.

Docket Numbers: ER16–1384–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: GIA and Distribution Service Agmt EUI Wind Park I Project to be effective 4/1/2016.
Filed Date: 4/12/16.
Accession Number: 20160412–5118.
Comments Due: 5 p.m. ET 5/3/16.

Docket Numbers: ER16–1385–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: GIA and Distribution Service Agmt EUI Wind Park II Project to be effective 4/1/2016.
Filed Date: 4/12/16.
Accession Number: 20160412–5119.
Comments Due: 5 p.m. ET 5/3/16.

Docket Numbers: ER16–1386–000.
Applicants: PJM Interconnection, L.L.C.
Description: Section 205(d) Rate Filing: Amendment to ISA No. 3324, Queue No. V1–028 per an Assignment to DIV—AR to be effective 5/2/2012.
Filed Date: 4/12/16.
Accession Number: 20160412–5121.
Comments Due: 5 p.m. ET 5/3/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 12, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–08922 Filed 4–18–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice of Technical Conference

Review of Generator Interconnection Agreements and Procedures .... Docket No. RM16–12–000.
American Wind Energy Association .... Docket No. RM15–21–000.

As announced in the Notice of Technical Conference issued on March 29, 2016 in the above-captioned proceedings,[1] Federal Energy Regulatory Commission (Commission) staff will hold a technical conference on May 13, 2016 to discuss select issues related to a petition for rulemaking submitted by the American Wind Energy Association (Docket No. RM15–21–000).[2] In addition, the conference will explore other generator interconnection issues, including interconnection of electric storage resources. The conference will be held from 9:30 a.m. to 4:30 p.m. (EDT) in the Commission Meeting Room at Commission headquarters, 888 First Street NE., Washington, DC 20426. Members of the Commission may attend the conference, which will also be open for the public to attend. Advance registration is not required, but is

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[1] Review of Generator Interconnection Agreements and Procedures, Docket Nos. RM16–12–000 and American Wind Energy Association, Docket No. RM15–21–000 (Mar. 29, 2016) (Notice of Technical Conference).

[2] The comments filed in Docket No. RM15–21–000 will be incorporated into Docket No. RM16–12–000.

encouraged. Attendees may register at the following Web page: *https://www.ferc.gov/whats-new/registration/05-13-16-form.asp.*
1.

Attached to this supplemental notice is a list of interconnection queue topics considered for discussion at the technical conference. Questions that speakers should be prepared to discuss are grouped by topic below. Please note that this organization does not necessarily reflect the individual panels that will take place at the technical conference. A final agenda will be provided in a subsequent supplemental notice of technical conference. Those interested in speaking at the technical conference should notify the Commission by April 20, 2016, by completing the online form at the following Web page: *https://www.ferc.gov/whats-new/registration/05-13-16-speaker-form.asp.* On this form, speakers can provide biographical information and indicate preferred topics to address. Due to time constraints, it may not be possible to accommodate all those interested in speaking. Selected speakers will be notified as soon as possible.

Discussions at the conference may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

E.ON Climate & Renewables North America LLC, Pioneer Trail Wind Farm, LLC, Settlers Trail Wind Farm, LLC v. Northern Indiana Public Service Company, Docket No. EL14–66–002;

Entergy Arkansas, Inc., Docket No. ER14–671–000;

Internal MISO Generators v. Midcontinent Independent System Operator, Inc., Docket No. EL15–99–000;

Midcontinent Independent System Operator, Inc., Docket No. ER16–675–000;

California Independent System Operator Corporation, Docket No. ER16–693–000;

ISO New England, Inc., Docket No. ER16–946–000;

Midcontinent Independent System Operator, Inc., Docket No. ER16–1120–000; and

Midcontinent Independent System Operator, Inc., Docket No. ER16–1211–000.

The conference will be transcribed and webcast. A link to the webcast of this event will be available in the Commission Calendar of Events at *http://www.ferc.gov.* Transcripts of the technical conference will be available for a fee from Ace-Reporting (202–347–3700). The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. For additional information, visit *www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about the technical conference, please contact Tony Dobbins (*Tony.Dobbins@ferc.gov;* 202–502–6630) or Adam Pan (*Adam.Pan@ferc.gov;* 202–502–6023). For information related to logistics, please contact Sarah McKinley (*Sarah.Mckinley@ferc.gov;* 202–502–8368).

Dated: April 13, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–08966 Filed 4–18–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9945–20–OA]

Notification of Public Teleconference of the Farm, Ranch, and Rural Community Federal Advisory Committee (FRRCC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency (EPA) hereby provides notice of a teleconference of the Farm, Ranch, and Rural Communities Committee (FRRCC). This teleconference is open to the public. Members of the public are encouraged to provide comments relevant to the specific issues being considered by the FRRCC.

DATES: The public teleconference will be held from noon to 2:00 p.m. (Eastern Time); 11:00 a.m. to 1:00 p.m. (Central Time); 10:00 a.m. to noon (Mountain Time); 9:00 a.m. to 11:00 a.m. (Pacific Time) on April 28, 2016.

Location: The presentation will be available through adobe connect and audio will be available through a teleconference number that will be available to public participants by contacting Donna Perla.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this public teleconference may contact Donna Perla, U.S. Environmental Protection Agency, Office of the Administrator (MC1101A), 1200 Pennsylvania Avenue NW., Washington, DC 20460; via email at *perla.donna@epa.gov,* or via telephone at 202–564–0184. General information concerning the EPA FRRCC can be found at *http://www2.epa.gov/faca/frrcc.*

SUPPLEMENTARY INFORMATION:

Background: EPA established the Farm, Ranch, and Rural Communities Committee (FRRCC) in 2008 to provide independent policy advice, information, and recommendations to the Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

The purpose of this teleconference is to provide a briefing from two North Dakotan agricultural producers, (Mr. Mark Jennings and Mr. Rocklin Bateman, Supervisor of Morton County Soil Conservation District), on their adoption of soil health practices and their perspectives on resulting challenges and benefits.

Meeting Access: For information on access to this teleconference or services for individuals with disabilities, please contact Donna Perla at 202–564–0184 or *perla.donna@epa.gov.* If special accommodations are needed, please request them at least four working days prior to the teleconference, to allow sufficient time to process your request.

Dated: April 11, 2016.

Ron Carleton,

Counselor to the Administrator for Agricultural Policy.

[FR Doc. 2016–08914 Filed 4–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9945–25–OW]

Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Charter for the Environmental Protection Agency's Environmental Financial Advisory Board (EFAB) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2.

The purpose of EFAB is to provide advice and recommendations to the Administrator of EPA on issues associated with environmental financing. It is determined that EFAB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Vanessa Bowie, Center for Environmental Finance, U.S. EPA, William Jefferson Clinton Federal Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460 (Mailcode 4201T), Telephone (202) 564–5186, or *bowie.vanessa@epa.gov*.

Andrew D. Sawyers,

Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2016–09023 Filed 4–18–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0072; FRL–9944–25–OAR]

Release of the Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability for public review of the draft document titled *Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter* (draft IRP). The draft IRP contains the current plans for the review of the air quality criteria for particulate matter (PM) and the primary and secondary national ambient air quality standards (NAAQS) for PM. The primary PM NAAQS are set to protect the public health and the secondary PM NAAQS are set to protect the public welfare from exposures to PM in ambient air.

DATES: Comments should be received on or before June 23, 2016.

ADDRESSES: The draft IRP will be available primarily via the Internet at *https://www3.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html*. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0072, to the *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, Cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Jenkins, Office of Air Quality Planning and Standards (mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–1167; fax number: 919–541–5315; email: *jenkins.scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI*. Do not submit this information to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing your Comments*. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by reference a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternative and substitute language for your requested changes.
- Describe any assumption and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Information Specific to This Document

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list certain air pollutants and then to issue air quality criteria for those pollutants. The Administrator is to list those air pollutants that in his or her "judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;" "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources;" and "for which . . . [the Administrator] plans to issue air quality criteria. . . ." Air quality criteria are intended to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air. . . ." (42 U.S.C. 7408(b)). Under section 109 (42 U.S.C. 7409), the EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) requires periodic review and, if appropriate, revision of existing air quality criteria. Revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and, if appropriate, revise the NAAQS based on the revised criteria. Section 109(d)(2) requires that an independent scientific review committee "shall complete a review of the criteria . . . and the national primary and secondary ambient air quality standards . . . and shall recommend to the Administrator any new . . . standards and revisions of the existing criteria and standards as may be appropriate. . . ." Since the early

1980s, this independent review function has been performed by the Clean Air Scientific Advisory Committee (CASAC).

Presently, the EPA is reviewing the criteria and the primary and secondary NAAQS for PM.[1] The draft IRP being announced today has been developed as part of the planning phase for the review. This phase began with a science policy workshop to identify issues and questions to frame the review.[2] Drawing from the workshop discussions, the draft IRP was prepared jointly by the EPA's National Center for Environmental Assessment, within the Office of Research and Development, and the EPA's Office of Air Quality Planning and Standards, within the Office of Air and Radiation. The draft IRP presents the current plan and specifies the anticipated schedule for the entire review, the process for conducting the review, and the key policy-relevant science issues that will guide the review. The draft IRP will be reviewed by CASAC at a teleconference on May 23, 2016.[3] The final IRP will include consideration of CASAC advice and public comments received on the draft IRP.

Dated: April 14, 2016.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2016–09036 Filed 4–18–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 14–252; GN Docket No. 12–268; WT Docket No. 12–269; DA 15–1488; DA 16–124; DA 16–241; DA 16–306 ; DA 16–224]

Wireless Telecommunications Bureau Releases File Formats and Corrects Technical Appendices Related to the Broadcast Incentive Auction

AGENCY: Federal Communications Commission.

ACTION: Notices; correction.

SUMMARY: In these documents, the Commission announces the release of specifications for data file formats and sample data files for the broadcast incentive auction's reverse auction (Auction 1001) and forward auction (Auction 1002). The Commission also announces the availability of updated file formats, a bid upload feature, and additional information related to impairment data downloads for Auction 1002. Finally, the Commission makes technical corrections to Appendix C and Appendix G of the *Auction 1000 Application Procedures Public Notice (Auction 1000 Application Procedures Public Notice).*

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For file format and impairment data download questions, contact Melissa Dunford at (202) 418–0617, Sasha Javid at (202) 418–2392, or Craig Bomberger at (202) 418–2953. For questions regarding corrections to Appendix C and Appendix G of the *Auction 1000 Application Procedures Public Notice,* contact Melissa Dunford at (202) 418–0617 or Martha Stancill at (202) 418–7015.

SUPPLEMENTARY INFORMATION: This is a summary of the following documents:

- *File Formats for Reverse Auction Public Notice,* AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 12–269, DA 16–241, released March 3, 2016;
- *File Formats for Forward Auction Clock Phase Public Notice,* AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 12–269, DA 15–1488, released December 23, 2015;
- *File Formats for Forward Auction Assignment Phase Public Notice,* AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 12–269, DA 16–124, released February 4, 2016;
- *Updated File Formats for Forward Auction Clock Phase and Additional Impairment Data Downloads Public Notice,* AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 12–269, DA 16–306, released March 24, 2016; and
- *Erratum,* AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 12–269, DA 16–224, released on March 4, 2016, to correct Appendix C and Appendix G of the *Auction 1000 Application Procedures Public Notice,* AU Docket No. 14–252, GN Docket No. 12–268, WT Docket No. 12–269, DA 15–1183, released October 15, 2015.

The complete texts of the *Public Notices* and *Erratum* are available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete texts are also available on the Commission's Web site at *http://wireless.fcc.gov,* the Auction 1000 Web site at *http://www.fcc.gov/auctions/1000,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

The *File Formats for Reverse Auction Public Notice* announces the release of specifications for the data file formats in which information related to the results of bidding in Auction 1001 will be made available to qualified bidders via the Auction System. The Public Notice also announces the release of sample data files pertaining to a hypothetical reverse auction bidder's stations, bids, and the results of its bidding. The specifications and sample data files, which are for illustrative purposes only, are available on the Auction 1001 Web site (*www.fcc.gov/auctions/1001*) in the Data section.

The *File Formats for Forward Auction Clock Phase Public Notice* provides specifications for the data file formats in which information related to the results of bidding in the clock phase of Auction 1002 will be made available to qualified bidders via the Auction System. Sample data files, which are for illustrative purposes only, are available on the Auction 1002 Web site (*www.fcc.gov/auctions/1002*) in the Data section.

The *File Formats for Forward Auction Assignment Phase Public Notice* announces the release of specifications for the data file formats in which information related to the results of bidding in the assignment phase of Auction 1002 will be made available to qualified bidders via the Auction System. Both the specifications and sample data files, which are for illustrative purposes only, are available on the Auction 1002 Web site (*www.fcc.gov/auctions/1002*) in the Data section.

The *Updated File Formats for Forward Auction Clock Phase and Additional Impairment Data Downloads Public Notice* announces the availability of updated data file formats and sample data files for the clock phase of Auction 1002. For those data files that are populated on a round-to-round basis, there will be a separate download file for each round of the auction rather than a file containing cumulative data for all rounds. The *Public Notice* also announces that a bid upload feature will be available to forward auction bidders in all rounds of the auction rather than just the initial round of the auction. Finally, the *Public Notice* announces the availability of additional information related to the impairment data downloads for the forward auction. The updated specifications, sample data files, and reference files are available on the Auction 1002 Web site (*www.fcc.gov/auctions/1002*) in the Data section.

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[1] The EPA's call for information for this review was issued on December 3, 2014 (79 FR 71764).

[2] The EPA held a workshop titled "Workshop to Discuss Policy-Relevant Science to Inform EPA's Review of the Primary and Secondary NAAQS for PM" on February 9–11, 2015 (79 FR 71764).

[3] 81 FR 13362, March 14, 2016.

The *Erratum* corrects Section 2.7 of Appendix C to the *Auction 1000 Application Procedures Public Notice* regarding the constraints used in the quaternary clearing target optimization and Sections 4 and 9 of Appendix G to the *Auction 1000 Application Procedures Public Notice* regarding when a bidder may submit switch bids and how next round bidder eligibility is calculated after an extended round. Updated versions of Appendix C and Appendix G are available in the Documents section of the Auction 1001 Web site (*www.fcc.gov/auctions/1001*) and in the Documents section of the Auction 1002 Web site (*www.fcc.gov/auctions/1002*).

Federal Communications Commission.

William Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2016–09026 Filed 4–18–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–336]

Final Notice of Intent To Terminate Authorization of JuBe, Communications, LLC

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the International Bureau affords JuBe Communications, LLC (JuBe) final notice and opportunity to respond to the December 23, 2015 letter submitted by the Department of Justice, with the concurrence of the Department of Homeland Security and the Federal Bureau of Investigation (collectively the "Executive Branch agencies") requesting that the FCC terminate, and declare null and void and no longer in effect and/or revoke the international section 214 authorization issued to JuBe under file number ITC–214–20070607–00218.

DATES: Submit comments on or before May 4, 2016.

ADDRESSES: The Bureau is serving a copy on JuBe by certified mail, return receipt requested, at the last address of record appearing in Commission records. JuBe should send its response to Denise Coca, Chief, Telecommunications and Analysis Division, International Bureau via email at *Denise.Coca@fcc.gov* and to Cara Grayer, Telecommunications and Analysis Division, International Bureau at *Cara.Grayer@fcc.gov* and file it in File No. ITC–214–20070607–00218 via IBFS at *http://licensing.fcc.gov/myibfs/pleading.do.*

FOR FURTHER INFORMATION CONTACT: Cara Grayer, Telecommunications and Analysis Division, International Bureau, at (202) 418–2960 or *Cara.Grayer@fcc.gov.*

SUPPLEMENTARY INFORMATION: In the Executive Branch Dec. 23, 2015 Letter, the Executive Branch agencies state that they have reason to believe that JuBe may be dissolved and no longer providing service. As a result, the Executive Branch agencies indicate that JuBe is unable to comply with the commitments and undertakings contained in the July 12, 2007 Letter that JuBe entered into with the Executive Branch agencies to address national security and law enforcement concerns. Compliance with these commitments is a condition to the international Section 214 authorization the Commission issued to JuBe on July 27, 2007, and by this notice the Bureau provides final notice to JuBe that it intends to take action to declare JuBe's international 214 authorization terminated for failure to comply with conditions of its authorization, and further advises that it may refer the matter for enforcement action for non-compliance with the applicable regulatory provisions. On January 19, 2016, the Bureau's Telecommunications and Analysis Division sent a letter to JuBe at the last known addresses on record via certified, return receipt mail, asking JuBe to respond to the Executive Branch agencies' allegations by February 18, 2016. The January 19, 2016 letter stated that failure to respond would result in the issuance of an order to terminate JuBe's international Section 214 authorization. JuBe did not respond to the request.

In addition, the Communications Act of 1934, as amended (the Act) and the Commission's rules require authorization holders to comply with certain requirements that enable the Commission to contact and communicate with the authorization holder and verify whether the authorization holder is still providing service. JuBe appears to have failed to comply with those requirements. For example, every carrier must designate an agent for service and keep that information current. *See* 47 U.S.C. 413; 47 CFR 1.47(h), 64.1195. *See also* 47 CFR 63.19, 63.21(a), and 63.21(d).

JuBe's failure to respond to this Public Notice will be deemed as an admission of the facts alleged by the Executive Branch agencies and of the violation of the statutory and rule provisions set out above. The Bureau hereby provides final notice to JuBe that it intends to take action to declare JuBe's international 214 authorization terminated for failure to comply with conditions of its authorization, and further advises that it may refer the matter for enforcement action for non-compliance with the applicable regulatory provisions. JuBe must respond to this Public Notice no later than 15 days after publication in the **Federal Register**.

The proceeding in this Notice shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.

Federal Communications Commission.

Denise Coca,

Chief, Telecommunications & Analysis Division, International Bureau.

[FR Doc. 2016–09006 Filed 4–18–16; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination; 10439 Security Bank, National Association, North Lauderdale, Florida

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10439 Security Bank, National Association, North Lauderdale, Florida (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Security Bank, National Association (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective April 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: April 14, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–08972 Filed 4–18–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2016–08461) published on page 21870 of the issue for Wednesday, April 13, 2016.

Under the Federal Reserve Bank of St. Louis heading, the entry for Jeffery F. Teague and Sarah Shell Teague, as co-trustees of the Jeffrey F. Teague and Sarah Shell Teague Joint Revocable Trust; Susan Shell Allison, individually, and as trustee of the Susan Allison Testamentary Trust, with power to vote shares owned by her two minor children, all of Benton, Arkansas; Joseph Shell, individually, and as trustee of the Joe Shell Testamentary Trust, with power to vote shares owned by the Hanna Shell Irrevocable Trust, and by his minor child, all of Batesville, Arkansas; Jay Shell, with power to vote shares held by Carolyn Southerland Shell Testamentary Trust and by High Point Farms; Jayme Shell; Jessica Shell; Mary K. Shell, all of Batesville, Arkansas; and John Allison, and Anna Allison, both of Benton, Arkansas; all as members of the Allison-Shell-Teague family control group is revised to read as follows:

1. *Jeffery F. Teague and Sarah Shell Teague, as co-trustees of the Jeffery F. Teague and Sarah Shell Teague Joint Revocable Trust, all of El Dorado, Arkansas; Susan Shell Allison, individually, and as trustee of the Susan Allison Testamentary Trust and with power to vote shares owned by her two minor children, all of Benton, Arkansas; Joseph Shell, individually, and as trustee of the Joe Shell Testamentary Trust and with power to vote shares owned by the Hanna Shell Irrevocable Trust, by the Hunter Shell Irrevocable Trust, and by his minor child, all of Batesville, Arkansas; Jay Shell with power to vote shares held by Carolyn Southerland Shell Testamentary Trust and by High Point Farms, Jayme Shell, Jessica Shell, Mary K. Shell, all of Batesville, Arkansas; and John Allison and Anna Allison,* both of Benton, Arkansas, all as members of the Allison-Shell-Teague Family Control Group; to retain voting shares of Citizens Bancshares of Batesville, and thereby indirectly retain voting shares of The Citizens Bank, both in Batesville, Arkansas.

Comments on this application must be received by April 28, 2016.

Board of Governors of the Federal Reserve System, April 14, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–08982 Filed 4–18–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 4, 2016.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *The Smith family, as a group, consisting of Francis C. Smith, Dublin, Ohio; George E. Smith, Longwood, Florida; Gretchen D. Smith, Longwood, Florida; Rita Jane Smith, Dublin, Ohio; Jamie B. Peterson, Dallas, Texas; Jacob F. Peterson, Dallas, Texas; Frederic J. Smith, Dublin, Ohio; Susan G. Smith, Dublin, Ohio; Emily M. Smith, Dublin, Ohio; Lucy E. Smith, Dublin, Ohio; Rita J. Smith, Waverley, California; Elizabeth M. Franco, Waverley, California, and John A. Franco, Waverley, California;* to retain voting shares of FNB Shares, Inc., and thereby indirectly retain voting shares of The First National Bank of McConnelsville, both in McConnelsville, Ohio.

Board of Governors of the Federal Reserve System, April 14, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–08983 Filed 4–18–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the notices must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 4, 2016.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *BankGuam Holding Company,* Hagatna, Guam; to acquire 25 percent of the voting shares of ASC Trust Company, Hagatna, Guam, and thereby engage in employee benefits consulting services, pursuant to section 225.28(b)(9)(ii).

Board of Governors of the Federal Reserve System, April 14, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–08980 Filed 4–18–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 13, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Sunshine Financial, Inc.*, Tallahassee, Florida; to become a bank holding company by acquiring 100 percent of voting shares of Sunshine Community Bank (Sunshine Savings Bank), Tallahassee, Florida, upon its conversion from a savings bank to a state chartered bank.

Board of Governors of the Federal Reserve System, April 14, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–08984 Filed 4–18–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 2016–08204) published on page 21346 of the issue for Monday, April 11, 2016.

Under the Federal Reserve Bank of St. Louis heading, the entry for Jeffery F. Teague and Sarah Shell Teague, as co-trustees of the Jeffery F. Teague and Sarah Shell Teague Joint Revocable Trust, all of El Dorado, Arkansas; Susan Shell Allison, individually, and as trustee of the Susan Allison Testamentary Trust with power to vote shares owned by her two minor children, all of Benton, Arkansas; Joseph Shell, individually, and as trustee of the Joe Shell Testamentary Trust with power to vote shares owned by the Hanna Shell Irrevocable Trust, and by his minor child, all of Batesville, Arkansas; Jay Shell with power to vote shares held by Carolyn Southerland Shell Testamentary Trust and by High Point Farms, Jayme Shell, Jessica Shell, Mary K. Shell, all of Batesville, Arkansas; and John Allison, and Anna Allison, both of Benton, Arkansas, all as members of the Allison-Shell-Teague family control group, is revised to read as follows:

1. *Jeffery F. Teague and Sarah Shell Teague, as co-trustees of the Jeffery F. Teague and Sarah Shell Teague Joint Revocable Trust, all of El Dorado, Arkansas; Susan Shell Allison, individually, and as trustee of the Susan Allison Testamentary Trust and with power to vote shares owned by her two minor children, all of Benton, Arkansas; Joseph Shell, individually, and as trustee of the Joe Shell Testamentary Trust and with power to vote shares owned by the Hanna Shell Irrevocable Trust, by the Hunter Shell Irrevocable Trust, and by his minor child, all of Batesville, Arkansas; Jay Shell with power to vote shares held by Carolyn Southerland Shell Testamentary Trust and by High Point Farms, Jayme Shell, Jessica Shell, Mary K. Shell, all of Batesville, Arkansas; and John Allison and Anna Allison,* both of Benton, Arkansas; to acquire and retain voting shares of Citizens Bancshares of Batesville, and thereby indirectly acquire and retain voting shares of The Citizens Bank, both in Batesville, Arkansas.

Comments on this application must be received by April 26, 2016.

Board of Governors of the Federal Reserve System, April 14, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–08981 Filed 4–18–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Support Noncustodial Parent Employment Demonstration (CSPED)

OMB No.: 0970–439.

Description: The Office of Child Support Enforcement (OCSE) within the Administration for Child and Families at the U.S. Department of Health and Human Services seeks an extension without change for an existing data collection called the *Child Support Noncustodial Parent Employment Demonstration (CSPED)* through September 30, 2018 (OMB no. 0970–439; expiration date September 30, 2016). Under CSPED, OCSE has issued grants to eight state child support agencies to provide employment, parenting, and child support services to parents who are having difficulty meeting their child support obligations. The overall objective of the CSPED evaluation is to document and evaluate the effectiveness of the approaches taken by these eight CSPED grantees. This evaluation will yield information about effective strategies for improving child support payments by providing non-custodial parents employment and other services through child support programs. It will generate extensive information on how these programs operated, what they cost, the effects the programs had, and whether the benefits of the programs exceed their costs. The information gathered will be critical to informing decisions related to future investments in child support-led employment-focused programs for non-custodial parents who have difficulty meeting their child support obligations.

The CSPED evaluation consists of the following two interconnected components or "studies":

1. *Implementation and Cost Study.* The goal of the implementation and cost study is to provide a detailed description of the programs—how they are implemented, their participants, the contexts in which they are operated, their promising practices, and their costs. The detailed descriptions will

assist in interpreting program impacts, identifying program features and conditions necessary for effective program replication or improvement, and carefully documenting the costs of delivering these services. Key data collection activities of the implementation and cost study include: (1) Conducting semi-structured interviews with program staff and selected community partner organizations to gather information on program implementation and costs; (2) conducting focus groups with program participants to elicit participation experiences; (3) administering a web-based survey to program staff and community partners to capture broader staff program experiences; and (4) collecting data on study participant service use, dosage, and duration of enrollment throughout the demonstration using a web-based Management Information System (MIS). Two of these collection activities will be completed before the requested extension period begins. They include the focus groups and the web-based survey of program staff and community partners.

2. *Impact Study.* The goal of the impact study is to provide rigorous estimates of the effectiveness of the eight programs using an experimental research design. Program applicants who are eligible for CSPED services are randomly assigned to either a program group that is offered program services or a control group. The study MIS that documents service use for the implementation study is also being used by grantee staff to conduct random assignment for the impact study. The impact study relies on data from surveys of participants, as well as administrative records from state and county data systems. Survey data are collected twice from program applicants. Baseline information is collected from all noncustodial parents who apply for the program prior to random assignment. A follow-up survey is collected from sample members twelve months after random assignment. A wide range of measures are collected through surveys, including measures of employment stability and quality, barriers to employment, parenting and co-parenting, and demographic and socio-economic characteristics. In addition, data on child support obligations and payments, Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP) benefits, Medicaid receipt, involvement with the criminal justice system, and earnings and benefit data collected through the Unemployment Insurance (UI) system are obtained from state and county databases.

Respondents: Respondents to these activities include study participants, grantee staff and community partners, as well as state and county staff responsible for extracting data from government databases for the evaluation. Specific respondents per instrument are noted in the burden table below.

Annual Burden Estimates

The following table provides the burden estimates for the implementation and cost study and the impact study components of the current request. The requested extension period is estimated to be two years and three months, from July 1, 2016 to September 30, 2018. Thus, burden hours for all components are annualized over two years and three months.

IMPLEMENTATION AND COST STUDY

Instrument	Total number of respondents remaining	Number of responses per respondent remaining	Average burden hours per response remaining	Estimated total burden hours remaining	Total annual burden hours remaining
Staff interview topic guide with program staff and community partners	120	1	1	120	53
Study MIS for grantee and partner staff to track program participation	200	468.75	0.0333	3,125	1,390

IMPACT STUDY

Instrument	Total number of respondents remaining	Number of responses per respondent remaining	Average burden hours per response remaining	Estimated total burden hours remaining	Total annual burden hours remaining
Introductory Script for Program Staff	120	9	.1667	180	80
Introductory Script for Program Participants	1,050	1	.1667	175	78
Baseline Survey	1,000	1	.5833	583	259
Study MIS to Conduct Random Assignment	120	9	.1667	180	80
Protocol for collecting administrative records	32	1	8	256	114
12-month follow-up survey	1,476	1	0.75	1,107	492

Estimated Total Annual Burden Hours: 2,546.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW., Washington DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRASUBSMISSION@OMB.EoP.GIV,* Attn: Desk Officer for the

Administration of Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–08979 Filed 4–18–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Health Insurance Assistance Program (SHIP) Client Contact Form, Public and Media Activity Report Form, and Resource Report Form

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by June 20, 2016.

ADDRESSES: Submit written comments on the collection of information by email to *Phillip.Mckoy@acl.hhs.gov*

FOR FURTHER INFORMATION CONTACT: Phillip Mckoy at 202.795.7397 or email: *Phillip.Mckoy@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance.

Grantees are required by Congress to provide information for use in program monitoring and for Government Performance and Results Act (GPRA) purposes. This information collection reports Client Contact Form, Public and Media Activity Report Form, and Resource Report Form, which have been used to collect data to evaluate program effectiveness and improvement. This information is used as the primary method for monitoring the SHIP Projects. ACL estimates the burden of this collection of information as follows: Respondents: 54 SHIP grantees at 18 hours per month (216 hours per year, per grantee). Total Estimated Burden Hours: 11,664 hours per year.

Dated: April 12, 2016.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–08958 Filed 4–18–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–New–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before June 20, 2016.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–New–60D for reference.

Information Collection Request Title: Teen Pregnancy Prevention Tier 1B Design and Implementation Study

Abstract: For the TPP Tier 1B Design and Implementation Study, we will document how each of the 50 grantees funded under this grant program are scaling-up efforts to strengthen and expand the reach of evidence-based TPP programs in their respective communities. OAH anticipates that grantees will employ diverse strategies in working within their communities to scale up their initiatives. Because this information collection will contribute to the emerging knowledge base about community-wide efforts to scale up evidence-based programs (EBPs), mobilize community support, and establish linkages to youth-friendly health services at the community level, it will be important to document the variety of grantee approaches and challenges they have encountered as a result of local conditions and strategies. To document these features and experiences, a lead staff member in each grantee organization will be interviewed by phone as well as up to two key grantee partners. Partners to be interviewed will be selected based on the prominence and variety of their roles within each initiative in order to provide multiple perspectives on implementation. To obtain more detail on implementation than can be gathered in a telephone interview, site visits with up to 15 grantees will be conducted to collect data that will illustrate in detail a variety of approaches and strategies for scaling up to the community level evidence-based approaches to teen pregnancy prevention.

Likely Respondents: Respondents for telephone interviews will include 50 TPP Tier 1B grantee project directors and 100 implementation partner project directors. Site visit interview participants will include 120 grantee and partner staff members, and 40 Community Advisory Group members. Eighty Youth Leadership Council members will be recruited to participate in 10 focus groups.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Grantee director (telephone)	Attachment B	50	1	90/60	75
Other grantee staff	Attachment A	60	1	1	60
Partner director (telephone)	Attachment B	100	1	90/60	150
Other partner directors	Attachment A	60	1	1	60
Youth Leadership Council members	Attachment A	80	1	1	80

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Community Advisory Group Members	Attachment A	40	1	1	40
Total	....	390	....	....	465

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2016–08975 Filed 4–18–16; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting; Privacy, Security & Confidentiality Subcommittee

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy, Confidentiality & Security.

Time and Date: May 24, 2016, 9:00 a.m.–5:30 p.m. EST; May 25, 2016, 9:00 a.m.–5:15 p.m. EST.

Place: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, Room 705A, Washington, DC 20201, (202) 690–7100.

Status: Open.

Purpose: HIPAA sets forth methodologies for de-identifying protected health information (PHI). Once PHI is de-identified, it is no longer subject to the HIPAA rules and can be used for any purpose. The U.S. Department of Health and Human (HHS) Services Office for Civil Rights (OCR) issued guidance in 2012, specifying two ways through which a covered entity can determine that health information is de-identified: (1) The Expert Determination Method and (2) the Safe Harbor Method. Much has changed in the health care landscape since that time, including greater availability and use of "big data." Concerns have been raised about the sufficiency of the HIPAA de-identification methodologies, the lack of oversight for unauthorized re-identification of de-identified data, and the absence of public transparency about the uses of de-identified data. The purpose of this hearing is to gather industry input on existing guidance and possible limitations of the de-identification methodologies for making recommendations to the Secretary of HHS.

The objectives of this meeting are as follows:

- Increase awareness of current and anticipated practices involving protected health information, such as the sale of information to data brokers and other data-mining companies for marketing and/or risk mitigation activities;
- Understand HIPAA's de-identification requirements in light of these practices, and
- Identify areas where outreach, education, technical assistance, a policy change, or guidance may be useful.

Contact Person for More Information: Rebecca Hines, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715 or Rachel Seeger, OS/OCR, Room 443D, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201, Phone: (202) 260–7106. Program information as well as summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on 770–488–3204 as soon as possible.

Dated: April 12, 2016.

James Scanlon,

Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2016–09075 Filed 4–18–16; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OMB # 0990–0424–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Assistant Secretary for Health, Office of Adolescent Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for revision of the approved information collection assigned OMB control number 0990–0424, which expires on January 31, 2019. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR. Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before June 20, 2016.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier OMB # 0990–0424–60D for reference.

Information Collection Request Title: Positive Adolescent Futures (PAF) Study

Abstract: The Office of Adolescent Health (OAH), U.S. Department of Health and Human Services (HHS) is requesting approval by OMB on a revised data collection. The Positive Adolescent Futures (PAF) Study will provide information about program design, implementation, and impacts through a rigorous assessment of program impacts and implementation of two programs designed to support expectant and parenting teens. These programs are located in Houston, Texas and throughout the state of California. This revised information collection request includes the 24-month follow-up survey instrument related to the impact study. The data collected from this instrument in the two study sites will provide a detailed understanding of program impacts about two years after youth are enrolled in the study and first have access to the programming offered by each site.

Need and Proposed Use of the Information: The data will serve two main purposes. First, the data will be used to determine program effectiveness by comparing outcomes on repeat pregnancies, sexual risk behaviors, health and well-being, and parenting behaviors between treatment (program) and control youth. Second, the data will be used to understand whether the programs are more effective for some youth than others. The findings from these analyses of program impacts will be of interest to the general public, to policymakers, and to organizations interested in supporting expectant and parenting teens.

Likely Respondents: The 24-month follow-up survey data will be collected through a web-based survey or through telephone interviews with study participants; *i.e.* adolescents randomly assigned to a program for expectant and parenting teens being tested for program effectiveness, or to a control group. The mode of survey administration will primarily be based on the preference of the study participants. The survey will be completed by 1,515 respondents across the two study sites. Clearance is requested for three years.

The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
24-month follow-up survey of impact study participants	505	1	.5	252.5
Total				252.5

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Darius Taylor,

Information Collection Clearance Officer.

[FR Doc. 2016–08974 Filed 4–18–16; 8:45 am]

BILLING CODE 4168–11–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Division of Epidemiology and Disease Prevention; Epidemiology Program for American Indian/Alaska Native Tribes and Urban Indian Communities

Announcement Type: Competing Continuation

Funding Announcement Number: HHS–2016–IHS–EPI–0001

Catalog of Federal Domestic Assistance Number: 93.231

Key Dates

Application Deadline Date: June 21, 2016

Review Date: July 11–15, 2016

Earliest Anticipated Start Date: September 15, 2016

Signed Tribal Resolutions Due Date: June 21, 2016

Proof of Non-Profit Status Due Date: June 21, 2016

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive cooperative agreement applications for Tribal Epidemiology Centers serving American Indian/Alaska Native (AI/AN) Tribes and urban Indian communities. This program is managed by the IHS Division of Epidemiology and Disease Prevention (DEDP). This program is authorized by the Indian Health Care Improvement Act (IHCIA), as amended, 25 U.S.C. 1621m, the Snyder Act, 25 U.S.C. 13, and described in the Catalog of Federal Domestic Assistance (CFDA) under 93.231.

Background

The Tribal Epidemiology Center (TEC) program was authorized by Congress in 1998 as a way to provide public health support to multiple Tribes and urban Indian communities in each of the IHS Areas. The funding opportunity announcement is open to eligible Tribes, Tribal organizations, Indian organizations, intertribal consortia, and urban Indian organizations, including currently funded TECs.

TECs are uniquely positioned within Tribes, Tribal and urban Indian organizations to conduct disease surveillance, research, prevention and control of disease, injury, or disability, and to assess the effectiveness of AI/AN public health programs. In addition, they can fill gaps in data needed for Government Performance and Results Act and Healthy People 2020 measures. Some of the existing TECs have already developed innovative strategies to monitor the health status of Tribes and urban Indian communities, including development of Tribal health registries and use of sophisticated record linkage computer software to correct existing state data sets for racial misclassification. TECs work in partnership with IHS DEDP to provide a more accurate national picture of Indian health status.

TECs provide critical support for activities that promote Tribal self-governance and effective management of Tribal and urban Indian health programs. Data generated locally and analyzed by TECs enable Tribes and urban Indian communities to effectively plan and make decisions that best meet the needs of their communities. In addition, TECs can immediately provide feedback to local data systems which will lead to improvements in Indian health data overall.

As more Tribes choose to operate health programs in their communities, TECs ultimately will provide additional public health services such as disease control and prevention programs. Some existing centers provide assistance to Tribal and urban Indian communities in such areas as sexually transmitted disease control and cancer prevention. They also assist Tribes and urban Indian communities to establish baseline data for successfully evaluating intervention and prevention activities through activities such as conducting Behavioral Risk Factor Surveillance (BRFS).

The TEC program will continue to enhance the ability of the Indian health system to collect and manage data more effectively and to better understand and develop the link between public health problems and behavior, socioeconomic conditions, and geography. The TEC program will also support Tribal and urban Indian communities by providing technical training in public health practice and prevention-oriented research and by promoting public health career pathways.

Purpose

The purpose of this cooperative agreement is to strengthen public health capacity and to fund Tribes, Tribal and urban Indian organizations, and intertribal consortia in identifying relevant health status indicators and priorities using sound epidemiologic principles. Work-plans submitted in response to this announcement must incorporate the grantee's desired objectives and demonstrate at minimum, four of the seven TEC core functional areas as outlined in the Indian Health Care Improvement Act (IHCIA) at 25 U.S.C. 1621m(b). Below is a list of the seven core functions of the TECs:

(1) Collect data relating to, and monitor progress made toward meeting, each of the health status objectives of the Service, the Indian Tribes, Tribal organizations, and urban Indian organizations in the service area;

(2) Evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health;

(3) Assist Indian Tribes, Tribal organizations, and urban Indian organizations in identifying highest-priority health status objectives and the services needed to achieve those objectives, based on epidemiological data;

(4) Make recommendations for the targeting of services needed by the populations served;

(5) Make recommendations to improve health care delivery systems for Indians and urban Indians;

(6) Provide requested technical assistance to Indian Tribes, Tribal organizations, and urban Indian organizations in the development of local health service priorities and incidence and prevalence rates of disease and other illness in the community; and

(7) Provide disease surveillance and assist Indian Tribes, Tribal organizations, and urban Indian communities to promote public health.

As grantees develop their desired objectives addressing a minimum of four of the core functions as outlined in IHCIA, grantees may include but are not limited to the following activities: Research, prevention and control of disease, injury, or disability; assessment of the effectiveness of AI/AN public health programs; epidemiologic analysis, interpretation, and dissemination of surveillance data; investigation of disease outbreaks; development and implementation of epidemiologic studies; development and implementation of disease control and prevention programs; and coordination of activities of other public health authorities in the region. It is the intent of IHS to fund sufficient TECs to serve Tribes and urban Indian communities in all 12 IHS administrative areas.

Each TEC selected for funding will act under a cooperative agreement with the IHS. During funded activities, the TECs may receive Protected Health Information (PHI) for the purpose of preventing or controlling disease, injury or disability, including, but not limited to, reporting of disease, injury, vital events, such as birth or death, and the conduct of public health surveillance, public health investigation, and public health interventions for the Tribal and urban Indian communities that they serve. TECs acting under a cooperative agreement with IHS are public health authorities for which the disclosure of PHI by covered entities is authorized by the Privacy Rule, 45 CFR 164.512(b). To achieve the purpose of this program, the recipient will be responsible for the activities under letter B. Grantee Cooperative Agreement Award Activities. Program Office will be responsible for activities under letter A. IHS Programmatic Involvement.

Pre-Conference Grant Requirements

The awardee is required to comply with the "HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications," dated December 16, 2013 ("Policy"), as applicable to conferences funded by grants and cooperative agreements. The Policy is available at *http://www.hhs.gov/grants/contracts/contract-policies-regulations/conference-spending/*.

The awardee is required to:

Provide a separate detailed budget justification and narrative for each conference anticipated. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, (8) Other (explain in detail and cost breakdown). For additional questions, please contact Selina Keryte, Program Officer at 301–443–7064 or email her at *selina.keryte@ihs.gov.*

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current fiscal year (FY) 2016 is approximately $4.4 million. Individual award amounts are anticipated to be between $350,000 and $1,000,000 annually. The amount of funding available for the competing continuation awards issued under this announcement are subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 12 awards will be issued under this program announcement.

Project Period

The project period is for five years and will run consecutively from September 30, 2016 to September 29, 2021.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and each grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

(1) Provide funded TECs with ongoing consultation and technical assistance to plan, implement, and evaluate each component as described under Recipient Activities. Consultation and technical assistance may include, but not be limited to, the following areas:

(a) Interpretation of current scientific literature related to epidemiology, statistics, surveillance, Healthy People 2020 and 2030 objectives, and other public health issues;

(b) Design and implementation of each program component such as surveillance, epidemiologic analysis, outbreak investigation, development of epidemiologic studies, development of disease control programs, and coordination of activities; and

(c) Overall operational planning and program management.

(2) Coordinate all IHS epidemiologic activities on a national scope including development and management of disease surveillance systems, generation of related reports, and investigation of disease outbreaks.

(3) Conduct annual site visits to TECs and/or coordinate TEC visits to IHS to assess work plans and ensure data security; confirm compliance with applicable laws and regulations; assess program activities; and to mutually resolve problems, as needed.

(4) Participate in annual TEC meeting for information sharing, problem solving, or training.

(5) Provide training in the use of data from the Epidemiology Data Mart (EDM) for purposes of creating reports for disease surveillance, epidemiologic analysis, and epidemiologic studies. Training can be provided online, or at the request of the grantee onsite.

(6) Coordinate opportunities for training of TEC staff where applicable. Examples include IHS Outbreak Response Review course, webinars on the Epi Data Mart and data use, technical assistance, use of statistical software, and fellowship opportunities.

B. Grantee Cooperative Agreement Award Activities

(1) Collect data relating to, and monitor progress made toward meeting, each of the health status objectives of the service, the Indian Tribes, Tribal organizations, and urban Indian organizations in the Service area.

(a) Establish culturally appropriate community health assessments to allow Tribal and urban Indian leaders to make informed decisions, prioritize health problems, and develop, implement, and evaluate community health improvement plans. Examples of the health reports could include stakeholder health assessments, profile data or any other data reports.

(b) Establish a Data Sharing Agreement (DSA) with the IHS Area Office to facilitate access to IHS electronic health record data that facilitates:

1. "Routine" activities for which the TEC will have access to de-identified data from IHS EDM.

2. Activities for which TECs will need additional permission for access and use of IHS data, such as special studies or research involving personal identifiers.

3. Complies with the Health Insurance Portability and Accountability Act (HIPPA) and the Privacy Act, and related practices to ensure sufficient stewardship of shared data.

4. Training requirements that must be met for initial and continued data access, such as periodic privacy and security procedures training.

5. For TECs that receive EDM data, annual reporting on data use, number and types of data products produced (*e.g.*, reports, publications, presentations), and impacts of EDM data use and products on established health status objectives is required.

(2) Evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health.

(a) Evaluations can address but are not limited to availability of health care resources, impacts of the Affordable Care Act, access to care, quality of care, health impact assessment, patient satisfaction, and the availability and capacity of providers.

(3) Assist Indian Tribes, Tribal organizations, and urban Indian organizations in identifying highest-priority health status objectives and the services needed to achieve those objectives, based on epidemiological data.

(9a) Develop relevant Community Health Profiles (CHPs) for Tribal and urban Indian communities served by the TEC within the geographical area of responsibility.

1. Establish CHPs specific for each Tribal or urban Indian community entirely served by the TECs.

2. Establish a regional CHP encompassing all the Tribal, and/or urban Indian communities served by the TEC.

3. Provide a plan that includes a project overview, specific health indicators, and means of dissemination for both Tribe-specific and regional CHPs.

(b) Participate in local, regional and national committees that address public health priorities and, as appropriate, with other Federal agencies.

(c) Establish and maintain an advisory council that can provide overall program direction and guidance. The advisory council should include some members with technical expertise in epidemiology and public health (*e.g.*, from state health departments or county health departments) and representation from the Tribal health and urban Indian health programs within the TECs regional area.

(4) Make recommendations for the targeting of services needed by the populations served.

(a) Translate available data and/or results of analyses on disease incidence/prevalence and determined risk factors into useful products, messaging, and outreach to effectively guide stakeholders' interventions addressing public health priorities.

(5) Make recommendations to improve health care delivery systems for Indians and urban Indians.

(6) Provide technical assistance to Indian Tribes, Tribal organizations, and urban Indian organizations in the development of local health service priorities and incidence and prevalence rates of disease and other illness in the community.

(a) Provide culturally appropriate training based on the needs of Indian Tribes, Tribal organizations, and urban Indian organization served. Topics may include but are not limited to program evaluation, data analysis, data quality, survey design and administration, program planning, community health assessment, and outbreak response.

(b) Establish an outbreak response capacity.

1. Explain how the TEC will establish and maintain relationships with other public health authorities (*e.g.*, Tribal, county, state) in order to facilitate collaborative outbreak response activities at the local or on a national or regional level.

2. Obligate a minimum of one program staff per year to attend the training in either the "Outbreak Response Review" or "Epidemiology Ready Course".

3. Explain how the TEC will collaborate and assist in public health

emergencies with the IHS, DEDP, State, local, county, Tribal and other Federal authorities.

(7) Provide disease surveillance and assist Indian Tribes, Tribal organizations, and urban Indian organizations to promote public health.

(a) Enhance or develop disease surveillance systems. Surveillance systems can address infectious and chronic diseases, record linkage studies to improve existing surveillance systems, suicide data tracking, regional health registries, influenza surveillance, among others.

(b) Develop and implement at least one Tribal and/or urban Indian BRFS survey to evaluate health risk behaviors of AI/AN populations served by the TECs, to include at minimum:

1. Protocol development that includes interview trainings, sampling method and recruitment strategy;
2. Database development to house data collected from the BRFS;
3. A dissemination plan that includes a project overview, dissemination goals, targeted audiences, key messages, and project evaluation;
4. Collaboration with the Tribal health director, health board, and/or the Tribal council, as appropriate, for review and approval of the BRFS project;
5. Obtain institutional review board (IRB) review(s) and approval(s) as needed to facilitate implementation.

In addition to the seven TEC core functional areas as outlined in the IHCIA, the grantee must also address the following activities in the work plan.

(1) Describe existing TEC staff capabilities or hiring plans for the key personnel with appropriate expertise in epidemiology, health sciences, and program management. The TEC must also demonstrate access to specialized expertise such as a doctoral level epidemiologist and/or a biostatistician.

(2) Explain how recipient will support the Agency's priorities:

(a) To renew and strengthen our partnerships with Tribes and urban Indians;

(b) To improve IHS;

(c) To improve the quality of and access to care; and

(d) To make all work accountable, transparent, fair and inclusive.

You may access information of IHS priorities via the Internet at the following ***https://www.ihs.gov/aboutihs/index.cfm/overview/***.

III. Eligibility Information

1. Eligibility

To be eligible for this competing continuation announcement an applicant must be one of the following:

Definitions

Indian Tribe—Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601, *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. 1603(14).

Tribal Organization—Tribal organization means the elected governing body of any Indian Tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. 25 U.S.C. 1603(26), 25 U.S.C. 450b(1).

Urban Indian organization—Urban Indian organization means a non-profit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in section 1653(a) of the IHCIA. 25 U.S.C. 1603(29).

Intertribal consortium—An intertribal consortium or AI/AN organization is eligible to receive a cooperative agreement if it is incorporated for the primary purpose of improving AI/AN health and representative of the Indian Tribes or urban Indian communities residing in the area in which the intertribal consortium is located. 25 U.S.C. 1621m (d)(2).

Current Tribal Epidemiology Center grantees are eligible to apply for competing continuation funding under this announcement and must demonstrate that they have complied with previous terms and conditions of the Epidemiology Program for American Indian/Alaska Native Tribes and Urban Indian Communities grant in order to receive funding under this announcement.

All applicants must represent or serve a population of at least 60,000 AI/AN to be eligible, as demonstrated by Tribal resolutions, blanket Tribal resolutions or Letter of Support (LoS) from urban Indian clinic directors and/or Chief Executive Officers (CEOs). Applicants must describe the population of AI/ANs and Tribes that will be represented. The number of AI/ANs served must be substantiated by documentation describing IHS user populations, United States Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid. Resolutions from each Tribe, AN village and LoS from each urban Indian community represented must be included in the application package. Collaborations with IHS Areas, Federal agencies such as the CDC, State, academic institutions or other organizations are encouraged (letters of support and collaboration should be included in the application).

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required such as Tribal resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount ($1,000,000) outlined under the "Estimated Funds Available" section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

Tribal Resolution

An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include Tribal resolutions from all affected Tribes to be served. Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. TECs that have an existing resolution(s) or blanket resolution in place that supports authority to apply for funding opportunity announcement on behalf of the members will not be required to submit a new resolution(s), if the resolution(s) from the prior cycle is still active.

Urban Indian organization(s) that is proposing a project affecting another urban Indian organizations or urban Indian clinics must include LoS signed by the Urban Indian clinic director and/

or CEO. An urban epidemiology center that has existing LoS documents from the Urban Indian clinic director and/or CEO in place granting authority to apply for the funding opportunity announcement on behalf of the urban Tribal members will not be required obtain additional LoS documents.

Please include a copy of the new or active Tribal resolution(s), blanket resolutions, or LoS in the application. The applicant must demonstrate how these documents meet the minimum requirement of 60,000 AI/AN population to be eligible for the cooperative agreement.

An official signed Tribal resolution, Tribal blanket resolution, or LoS for the urban Indian organization must be received by the DGM prior to a Notice of Award being issued to any applicant selected for funding. However, if an official signed Tribal resolution, Tribal blanket resolution, or LoS cannot be submitted with the electronic application submission prior to the official application deadline date, a draft Tribal resolution, Tribal blanket resolution, or LoS for urban Indian organization must be submitted by the deadline in order for the application to be considered complete and eligible for review. The draft Tribal resolution, Tribal blanket resolution, or LoS is not in lieu of the required signed resolution, but is acceptable until a signed resolution or LoS is received. If an official signed Tribal resolution, Tribal blanket resolution, or LoS is not received by DGM when funding decisions are made, then a Notice of Award will not be issued to that applicant and they will not receive any IHS funds until such time as they have submitted a signed resolution to the grants management specialist listed in this funding announcement.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with the application submission by the Application Deadline Date listed under the Key Dates section on page one of this announcement.

An applicant submitting any of the above additional documentation after the initial application submission due date is required to ensure the information was received by the IHS by obtaining documentation confirming delivery (*i.e.*, FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/dgm/funding/*.

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - ○ SF–424, Application for Federal Assistance.
  - ○ SF–424A, Budget Information—Non-Construction Programs.
  - ○ SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed five pages).
- Project Narrative (must be single spaced and not exceed 10 pages).
  - ○ Background information on the organization.
  - ○ Proposed scope of work that includes grantees' desired objectives, a minimum of four of the seven core functions of the TEC as outlined in the IHCIA, and provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Tribal resolution, Tribal blanket resolution, or LoS from urban Indian clinic directors/CEOs.
- 501(c)(3) Certificate (if applicable).
- Position descriptions and biographical sketches for all key personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational Chart.
- Map of the areas to benefit from the program.
- Data Sharing Agreements (if applicable).
- Letters of support from collaborating agencies.
- Documentation of current Office of Management and Budget (OMB) Audit as required by 45 CFR part 75, subpart F or other required Financial Audit (if applicable).

Acceptable forms of documentation include:

- ○ Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- ○ Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database*.

Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the discrimination policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than 10 pages and must: Be single-spaced, be typewritten, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly address and answer all questions listed under the narrative and place them under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they shall not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming familiar with the applicant's activities and accomplishments prior to this cooperative agreement award. If the narrative exceeds the page limit, only the first 10 pages will be reviewed. The 10 page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (3 Pages)

Section 1: Introduction and Need for Assistance

Must include the applicant's background information, a description of epidemiological service, epidemiologic capacity and history of support for such activities. Applicants need to include current public health activities, what program services are currently being provided, and interactions with other public health authorities in the region (State, local, or Tribal).

Section 2: Organizational Capabilities

The applicant must describe staff capabilities or hiring plans for the key personnel with appropriate expertise in epidemiology, health sciences, and program management. The applicant must also demonstrate access to specialized expertise such as a doctoral level epidemiologist and/or a biostatistician. Applicants must include an organizational chart, and provide position descriptions and biographical sketches of key personnel including consultants or contractors. The position description should clearly describe each position and its duties. Resume should indicate that proposed staff is qualified to carry out the project activities.

Section 3: User Population

The number of AI/ANs served must be substantiated by documentation describing IHS user populations, United States Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid.

Part B: Program Planning and Evaluation (5 Pages)

Section 1: Program Plans

Applicant must include a work-plan that describes program goals, objectives, activities, timeline, and responsible person for carrying out the objectives/activities. The applicant must include at least a minimum of four of the seven core functions of the IHCIA and other activities listed under the Grantee Cooperative Agreement Award Activities.

Section 2: Program Evaluation

Applicant must define the criteria to be used to evaluate activities listed in the work-plan under the Grantee Cooperative Agreement Award Activities. They must explain the methodology that will be used to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved and describe how evaluation findings will be disseminated to stakeholders.

Part C: Program Report (2 Pages)

Section 1: Describe major accomplishments over the last 24 months.

Sample: Please identify and describe significant program achievements associated with the delivery of quality health services. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 24 months.

Sample: Please identify and summarize recent major health related project activities of the work done during the project period.

B. Budget Narrative: This narrative must include a line item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals, objectives, and activities as outlined in the project narrative. Budget should match the scope of work described in the project narrative. The page limitation should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. Grants.gov will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), DGM Grant Systems Coordinator, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If the applicant needs to submit a paper application instead of submitting electronically through Grants.gov, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). The waiver must: (1) Be documented in writing (emails are acceptable), *before* submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov*. Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval *must* be submitted along with the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Find Grant Opportunities" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant receives a waiver to submit paper application documents, they must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the Application Deadline Date listed in the Key Dates section on page one of this announcement.

Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Robert.Tarwater@ihs.gov.* Please include a clear justification for the need to deviate from the standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the Application Deadline Date listed in the Key Dates section on page one of this announcement.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for SAM and Grants.gov could take up to fifteen working days.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this funding announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download the application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the DEDP will notify the applicant that the application has been received.
- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at *https://www.sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3–5 business days to process. Registration with the SAM is free of charge. Applicants may register online at *https://www.sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 10 page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See "Multi-year Project Requirements" at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 65 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (25 Points)

a. Describe the applicant's current public health activities including programs or services currently provided, interactions with other public health authorities in the regions (State, local, or Tribal) and how long it has been operating. Specifically describe current epidemiologic capacity and history of support for such activities.

b. Provide a physical location of the TEC and area to be served by the proposed program including a map (include the map in the attachments), and specifically describe the office space and how it is going to be paid for.

c. Describe the applicant's user population. The applicant must demonstrate AI/ANs will be served and must be substantiated by documentation describing IHS user populations, United States Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid data.

B. Project Objectives, Work Plan, and Approach (45 Points)

a. State in measurable and realistic terms the objectives and appropriate activities to achieve each objective for the projects as listed in the Substantial Involvement Description for Cooperative Agreement, B. Grantee Cooperative Agreement Award Activities. The work-plan needs to include the grantees desired objectives and must demonstrate a minimum of four of the seven TEC core functional areas as outlined IHCIA.

b. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

c. Include a work-plan for each objective that indicates when the objectives and major activities will be accomplished and who will conduct the activities.

C. Program Evaluation (10 Points)

a. Define the criteria to be used to evaluate activities listed in the work-plan under the Substantial Involvement Description for Cooperative Agreement, B. Grantee Cooperative Agreement Award Activities.

b. Explain the methodology that will be used to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved.

c. Describe how evaluation findings will be disseminated to stakeholders.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

a. Explain both the management and administrative structure of the organization including documentation of current certified financial management systems from the Bureau of Indian Affairs, IHS, or a Certified Public Accountant and an updated organizational chart (include in appendix).

b. Describe the ability of the organization to manage a program of the proposed scope.

c. Provide position descriptions and biographical sketches of key personnel, including those of consultants or contractors in the Appendix. Position descriptions should very clearly describe each position and its duties, indicating desired qualification and experience requirements related to the project. Resumes should indicate that the proposed staff is qualified to carry out the project activities. Applicants with expertise in epidemiology will receive priority.

d. Applicant must at least have two epidemiologists as part of the proposal.

E. Categorical Budget and Budget Justification (5 Points)

a. The five points for Categorical Budget only applies to Year 1. Provide a line item budget and budget narrative for Year 1.

b. Provide a justification by line item in the budget including sufficient cost and other details to facilitate the determination of cost allowance and relevance of these costs to the proposed project. The funds requested should be appropriate and necessary for the scope of the project.

c. If use of consultants or contractors are proposed or anticipated, provide a detailed budget and scope of work that clearly defines the deliverables or outcomes anticipated.

d. If applicable, if the applicant will be hosting a conference, the applicant must include a separate detailed budget justification and narrative for the conference. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, (8) Other (explain in detail and cost breakdown).

e. Applicant is encouraged to submit a line item budget and budget narrative by category for years 2–5 as an appendix to show the five-year plan of the proposal.

Multi-Year Project Requirements

Projects requiring a second, third, fourth, and/or fifth year must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project.

Additional Documents Can Be Uploaded as Appendix Items in Grants.gov

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS Program to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.,* budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (*https://www.grantsolutions.gov*). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 65 and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be "Approved", but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2016 the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. *Administrative Regulations for Grants:*

- Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.

C. *Grants Policy:*

- HHS Grants Policy Statement, Revised 01/07.

D. *Cost Principles:*

- Uniform Administrative Requirements for HHS Awards, "Cost Principles," located at 45 CFR part 75, subpart E.

E. *Audit Requirements:*

- Uniform Administrative Requirements for HHS Awards, "Audit Requirements," located at 45 CFR part 75, subpart F.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *https://rates.psc.gov/* and the Department of Interior (Interior Business Center) *https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-Tribes.* For questions regarding the indirect cost policy, please call the grants management specialist listed under "Agency Contacts" or the main DGM office at (301) 443–5204.

4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period. For TECs that receive EDM data, annual reporting on data use, number and types of products produced (*e.g.,* reports, publications, presentations), and impacts of EDM data use and products on established health status objectives is required.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at: *http://www.dpm.psc.gov.* It is recommended that the applicant also send a copy of the FFR (SF–425) report to the grants management specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: the Progress Reports and Federal Financial Report.

C. Post Conference Grant Reporting

The following requirements were enacted in Section 3003 of the Consolidated Continuing Appropriations Act, 2013, and Section 119 of the Continuing Appropriations Act, 2014; *Office of Management and Budget Memorandum M–12–12:* All HHS/IHS awards containing grants funds allocated for conferences will be required to complete a mandatory post award report for all conferences. Specifically: The total amount of funds provided in this award/cooperative agreement that were spent for "Conference X", must be reported in final detailed actual costs *within 15 days of the completion of the conference.* Cost categories to address should be: *(1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, (8) Other.*

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: *http://www.ihs.gov/dgm/policytopics/.*

E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see *http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/*.

The HHS Office for Civil Rights also provides guidance on complying with civil rights laws enforced by HHS. Please see *http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html;* and *http://www.hhs.gov/civil-rights/index.html*. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html*. Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at *http://www.hhs.gov/civil-rights/for-individuals/disability/index.html* or call 1–800–368–1019 or TDD 1–800–537–7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at *http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53*.

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for benefits and services from the Indian Health Service.

Recipients will be required to sign the HHS–690 Assurance of Compliance form which can be obtained from the following Web site: *http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf*, and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW., Washington, DC 20201.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) before making any award in excess of the simplified acquisition threshold (currently $150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General (OIG) all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mail Stop 09E70, Rockville, Maryland 20857 (Include "Mandatory Grant Disclosures" in subject line). Ofc: (301) 443–5204; Fax: (301) 594–0899; Email: *Robert.Tarwater@ihs.gov. AND* U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW., Cohen Building, Room 5527, Washington, DC 20201. URL: *http://oig.hhs.gov/fraud/report-fraud/index.asp* (Include "Mandatory Grant Disclosures" in subject line). Fax: (202) 205–0604 (Include "Mandatory Grant Disclosures" in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov.*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

VII. Agency Contacts

1. *Questions on the programmatic issues may be directed to:* Selina T. Keryte, MPH, Project Officer, Office of Public Health Support, Division of Epidemiology & Disease Prevention, Indian Health Service, 5600 Fishers Lane, Mailstop 09E10D, Rockville, MD 20857. Phone: (301) 443–7064 or *Selina.keryte@ihs.gov.*

2. *Questions on grants management and fiscal matters may be directed to:* John Hoffman, Senior Grants Management Specialist, IHS Division of Grants Management, 5600 Fishers Lane, Mailstop 09E70, Rockville, MD 20857. Phone: (301) 443–2116; Email: *John.Hoffman@ihs.gov.*

3. *Questions on systems matters may be directed to:* Paul Gettys, Grant Systems Coordinator, IHS Division of Grants Management, 5600 Fishers Lane, Mailstop 09E70, Rockville, MD 20857. Phone: (301) 443–2114; or the DGM main line 301–443–5204; Fax: (301) 594–0899; E-Mail: *Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: April 8, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations Indian Health Service.

[FR Doc. 2016–09012 Filed 4–18–16; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of the CB1/INOS Series of Compounds as a Therapeutic To Treat System Sclerosis, Scleroderma, and Other Skin Fibrotic Diseases in Humans

AGENCY: National Institutes of Diabetes and Digestive and Kidney Diseases, Public Health Service, PHS, National Institutes of Health.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the following inventions embodied in the following patent applications, entitled "CB1 receptor mediating compounds":

1. U.S. Provisional Patent Application No.: 61/991,333, HHS Ref. No.: E–140–2014/0–US–01, Filed: May 09, 2014
2. PCT Application No.: PCT/US2015/029946, HHS Ref. No.: E–140–2014/0–PCT–02, Filed: May 08, 2015
3. U.S. Provisional Patent Application No.: 61/725,949, HHS Ref. No.: E–282 –2012/0–US–01, Filed: November 13, 2012
4. PCT Application No.: PCT/US2013/069686, HHS Ref. No.: E–282 –2012/0–PCT–02, Filed: November 12, 2013
5. U.S. Patent Application No.: 14/442,383, HHS Ref. No.: E–282–2012/0–US–03, Filed: May 12, 2015
6. Canadian Patent Application No.: 2889697, HHS Ref. No.: E–282–2012/0–CA–04, Filed: April 27, 2015
7. European Patent Application No.: 13802153.0, HHS Ref. No.: E–282–2012/0–EP–05, Filed: June 01, 2015
8. Indian Patent Application No.: 3733/DELNP/2015, HHS Ref. No.: E–282–2012/0–IN–06, Filed: May 01, 2015
9. Japanese Patent Application No.: 2015–542015, HHS Ref. No.: E–282–2012/0–JP–07, Filed: May 11, 2015
10. Chinese Patent Application No.: 201380069389.9, HHS Ref. No.: E–282–2012/0–CN–08, Filed: July 3, 2015
11. US Provisional Application No.: 62/171,179, HHS Ref. No.: E–282–2012/1–US–01, Filed: June 04, 2015

to Vital Spark Inc., ("Vital Spark"), a company incorporated under the laws of Delaware and having an office in Jerusalem, Israel. The patent rights in these inventions have been assigned to the United States of America. This license may be worldwide. The field of use may be limited to the use of the Licensed Patent Rights to "develop the CB1/iNOS series of compounds as a therapeutic to treat systemic sclerosis, scleroderma, and other skin fibrotic diseases."

DATES: Only written comments and/or applications for a license which are received by the Technology Advancement Office, The National Institute of Diabetes and Digestive and Kidney Diseases on or before May 4, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, patents, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Betty Tong, Ph.D., Sr. Licensing and Patenting Manager, Technology Advancement Office, The National Institute of Diabetes and Digestive and Kidney Diseases, 12A South Drive, Bethesda, MD 20892, Email: *betty.tong@nih.gov*. A signed confidentiality non-disclosure agreement will be required to receive copies of any patent applications that have not been published by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: This technology, and its corresponding patent applications, is directed to methods of treating fibrosis, obesity and associated diseases such as type 2 diabetes by administering an agent that reduces appetite, body weight, hepatic steatosis, and insulin resistance. This technology may be useful as a means for treating various fibrotic diseases and metabolic syndromes without serious adverse neuropsychiatric side effects.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the Technology Advancement Office receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 13, 2016.

Anna Amar,

Acting Deputy Director, Technology Advancement Office, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2016–08985 Filed 4–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–13–228: Biomarkers for Diabetes and Kidney Diseases using Biosamples from the NIDDK Repository (R01).

Date: June 1, 2016.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contaact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, ROOM 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–KUH Fellowship Review.

Date: June 3, 2016.

Time: 8:00 a.m. to 9:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Member Conflict SEP.

Date: June 3, 2016.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–15–027: Human Pancreas Procurement and Analysis Program (HPPAP) (UC4].

Date: June 6, 2016.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, BETHESDA, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK–15–025: Mechanisms Underlying the Contribution of Type 1 Diabetes Risk-Associated Variants (DP3).

Date: June 23, 2016.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; George M. O'Brien Urology Cooperative Research Centers Program (U54).

Date: July 12, 2016.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Capital View, 2850 South Potomac Avenue, Arlington, VA 22202.

Contact Person: Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20817, 301–496–9010, *hoffertj@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 13, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08995 Filed 4–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Open Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will also be videocast and can be accessed from the NIH Videocasting and Podcasting Web site (*http://videocast.nih.gov/*).

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: July 13, 2016.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: Strategic Discussion of NCI's Clinical and Translational Research Programs.

Place: National Institutes of Health, Building 31, C–Wing, 6th Floor, Room 9 and 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, MPH Director, Coordinating Center for Clinical Trials, National Institutes of Health, National Cancer Institute, 9609 Medical Center Drive, Room 6W136, Rockville, MD 20850, 240–276–6173, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 13, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08949 Filed 4–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NEW NIDDK PARs on Pragmatic Research and Natural Experiments.

Date: May 13, 2016.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 13, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08996 Filed 4–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Great Challenge Synthetic Biology Program Project.

Date: May 19–20, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: High Throughput Screening.

Date: May 19, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 13, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08991 Filed 4–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "NIAID Investigator Initiated Program Project Applications (P01)"

Date: May 12, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3F100, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Jay R. Radke, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G11B, National Institutes of Health, NIAID, 5601 Fishers Lane MSC–9823, Bethesda, MD 20892–9823, (240) 669–5046, *jay.radke@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 14, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08993 Filed 4–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; NIBIB P41 Site Visit (2016/10).

Date: May 1–3, 2016.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Dallas Marriott Suites Medical/Market Center, 2493 North Stemmons Freeway, Dallas, TX 75207.

Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 967, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: April 13, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08994 Filed 4–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Development of MRI–1569, MRI–2213 and MRI–2214 as a Therapeutic To Treat Obesity, Diabetes, Fatty Liver Disease and Liver Fibrosis

AGENCY: National Institutes of Diabetes and Digestive and Kidney Diseases, Public Health Service, PHS, National Institutes of Health, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR part 404.7, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the following inventions embodied in the following patent applications, entitled "CB1 receptor mediating compounds":

1. U.S. Provisional Patent Application No.: 61/991,333, HHS Ref. No.: E–140–2014/0–US–01, Filed: May 09, 2014.
2. PCT Application No.: PCT/US2015/029946, HHS Ref. No.: E–140–2014/0–PCT–02, Filed: May 08, 2015.
3. U.S. Provisional Patent Application No.: 61/725,949, HHS Ref. No.: E–282–2012/0–US–01, Filed: November 13, 2012.
4. PCT Application No.: PCT/US2013/069686, HHS Ref. No.: E–282–2012/0–PCT–02, Filed: November 12, 2013.
5. U.S. Patent Application No.: 14/442,383, HHS Ref. No.: E–282–2012/0–US–03, Filed: May 12, 2015.
6. Canadian Patent Application No.: 2889697, HHS Ref. No.: E–282–2012/0–CA–04, Filed: April 27, 2015.
7. European Patent Application No.: 13802153.0, HHS Ref. No.: E–282–2012/0–EP–05, Filed: June 01, 2015.
8. Indian Patent Application No.: 3733/DELNP/2015, HHS Ref. No.: E–282–2012/0–IN–06, Filed: May 01, 2015.
9. Japanese Patent Application No.: 2015–542015, HHS Ref. No.: E–282–2012/0–JP–07, Filed: May 11, 2015.
10. Chinese Patent Application No.: 201380069389.9, HHS Ref. No.: E–282–2012/0–CN–08, Filed: July 3, 2015.
11. US Provisional Application No.: 62/171,179, HHS Ref. No.: E–282–2012/1–US–01, Filed: June 04, 2015.

to Kalytera Therapeutics Inc., ("Kalytera"), a company incorporated under the laws of Delaware and having an office in Hermosa Beach, California. The patent rights in these inventions have been assigned to the United States of America. This license may be worldwide. The field of use may be limited to the use of the Licensed Patent Rights to the development of select compounds from the patents listed above.

DATES: Only written comments and/or applications for a license which are received by the Technology Advancement Office, The National Institute of Diabetes and Digestive and Kidney Diseases on or before May 4, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, patents, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Betty Tong, Ph.D., Sr. Licensing and Patenting Manager, Technology Advancement Office, The National Institute of Diabetes and Digestive and Kidney Diseases, 12A South Drive, Bethesda, MD 20892; Email: *betty.tong@nih.gov.* A signed confidentiality non-disclosure agreement will be required to receive copies of any patent applications that have not been published by the United States Patent and Trademark Office or the World Intellectual Property Organization.

SUPPLEMENTARY INFORMATION: This technology, and its corresponding patent applications, is directed to methods of treating fibrosis, obesity and associated diseases such as type 2 diabetes by administering an agent that reduces appetite, body weight, hepatic steatosis, and insulin resistance. This technology may be useful as a means for treating various fibrotic diseases and metabolic syndromes without serious adverse neuropsychiatric side effects.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.7. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the Technology Advancement Office receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.7.

Properly filed competing applications for a license in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 13, 2016.

Anna Amar,

Acting Deputy Director, Technology Advancement Office, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2016–08986 Filed 4–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Center for Advancing Translational Sciences.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cures Acceleration Network Review Board.

Date: May 12, 2016.

Time: 8:30 a.m. to 2:45 p.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov.*

Name of Committee: National Center for Advancing Translational Sciences Advisory Council.

Date: May 12, 2016.

Open: 8:30 a.m. to 2:45 p.m.

Agenda: Report from the Institute Director and other staff.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Closed: 3:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Anna L. Ramsey-Ewing, Ph.D., Executive Secretary, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 1072, Bethesda, MD 20892, 301–435–0809, *anna.ramseyewing@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: April 13, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–08992 Filed 4–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Dependence—42 CFR part 8 (OMB No. 0930–0206) and Opioid Treatment Programs (OTPs)—Revision

42 CFR part 8 establishes a certification program managed by SAMHSA's Center for Substance Abuse Treatment (CSAT). The regulation requires that Opioid Treatment Programs (OTPs) be certified. "Certification" is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. To become certified, an OTP must be accredited by a SAMHSA-approved accreditation body. The regulation also provides standards for such services as individualized treatment planning, increased medical supervision, and assessment of patient outcomes. This submission seeks continued approval of the information collection requirements in the regulation and of the forms used in implementing the regulation.

SAMHSA currently has approval for the Application for Certification to Use Opioid Drugs in a Treatment Program Under 42 CFR 8.11 (Form SMA–162); the Application for Approval as Accreditation Body Under 42 CFR 8.3(b) (Form SMA–163); and the Exception Request and Record of Justification Under 42 CFR 8.12 (Form SMA–168), which may be used by physicians when there is a patient care situation in which the physician must make a treatment decision that differs from the treatment regimen required by the regulation. Form SMA–168 is a simplified, standardized form to facilitate the documentation, request, and approval process for exceptions.

SAMHSA believes that the recordkeeping requirements in the regulation are customary and usual practices within the medical and rehabilitative communities and has not calculated a response burden for them. The recordkeeping requirements set forth in 42 CFR 8.4, 8.11, and 8.12 include maintenance of the following: 5-year retention by accreditation bodies of certain records pertaining to accreditation, and documentation by an OTP of the following: A patient's medical examination when admitted to treatment, a patient's history, a treatment plan, any prenatal support provided to the patient, justification of unusually large initial doses, changes in a patient's dosage schedule, justification of unusually large daily doses, the rationale for decreasing a patient's clinic attendance, and documentation of physiologic dependence.

The rule also includes requirements that OTPs and accreditation organizations disclose information. For example, 42 CFR 8.12(e)(1) requires that a physician explain the facts concerning the use of opioid drug treatment to each patient. This type of disclosure is considered to be consistent with the common medical practice and is not considered an additional burden. Further, the rule requires, under Sec. 8.4(i)(1) that accreditation organizations shall make public their fee structure; this type of disclosure is standard business practice and is not considered a burden.

A number of changes have been made to the forms. Forms have been reworded for clarification, updated with current SAMHSA mailing and web-submission information, and a few additional fields have been provided for clarity and for providers to best explain their services (*e.g.,* expanding the former global patient census in the SMA–162 to request patient census by drug type—methadone, buprenorphine, naltrexone, or other) and the needs of their patients (*e.g.,* including urinalysis results on the SMA–168 and adding "weather crisis" as a standard option for physician justification of the requested exception). Amendments also include the removal of information pertaining to faxing the forms to SAMHSA, as this is no longer an acceptable form of submission. The burden hours have increased slightly (by 28% or approximately 639 hours) due to an increase in the number of facilities accredited and certified by SAMHSA since the previous submissions of these forms. The forms are available online with a unique feature for both the SMA–162 and SMA–168 that pre-populates certain information within the form. This in turn reduces the program's time spent filling out the forms as well as the staff time spent on processing it.

The tables that follow summarize the annual reporting burden associated with the regulation, including burden associated with the forms.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hours
8.3(b)(1–11)	Initial approval (SMA–163)	1	1	1	6.00	6.00

Estimated Annual Reporting Requirement Burden for Accreditation Bodies—Continued

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hours
8.3(c)	Renewal of approval (SMA–163)	2	1	2	1.00	2.00
8.3(e)	Relinquishment notification	1	1	1	0.50	0.50
8.3(f)(2)	Non-renewal notification to accredited OTPs.	1	90	90	0.10	9.00
8.4(b)(1)(ii)	Notification to SAMHSA for seriously noncompliant OTPs.	2	2	4	1.00	4.00
8.4(b)(1)(iii)	Notification to OTP for serious noncompliance.	2	10	20	1.00	20.00
8.4(d)(1)	General documents and information to SAMHSA upon request.	6	5	30	0.50	15.00
8.4(d)(2)	Accreditation survey to SAMHSA upon request.	6	75	450	0.02	9.00
8.4(d)(3)	List of surveys, surveyors to SAMHSA upon request.	6	6	36	0.20	7.20
8.4(d)(4)	Report of less than full accreditation to SAMHSA.	6	5	30	0.50	15.00
8.4(d)(5)	Summaries of Inspections	6	50	300	0.50	150.00
8.4(e)	Notifications of Complaints	12	6	72	0.50	36.00
8.6(a)(2) and (b)(3).	Revocation notification to Accredited OTPs.	1	185	185	0.30	55.50
8.6(b)	Submission of 90-day corrective plan to SAMHSA.	1	1	1	10.00	10.00
8.6(b)(1)	Notification to accredited OTPs of Probationary Status.	1	185	185	0.30	55.50
Sub Total		54		1,407		394.70

Estimated Annual Reporting Requirement Burden for Opioid Treatment Programs

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hours
8.11(b)	Renewal of approval (SMA–162)	386	1	386	0.15	57.90
8.11(b)	Relocation of Program (SMA–162)	35	1	35	1.17	40.95
8.11(e)(1)	Application for provisional certification.	42	1	42	1.00	42.00
8.11(e)(2)	Application for extension of provisional certification.	30	1	30	0.25	7.50
8.11(f)(5)	Notification of sponsor or medical director change (SMA–162).	60	1	60	0.10	6.00
8.11(g)(2)	Documentation to SAMHSA for interim maintenance.	1	1	1	1.00	1.00
8.11(h)	Request to SAMHSA for Exemption from 8.11 and 8.12 (including SMA–168).	1,325	25	33,125	0.07	2,318.75
8.11(i)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA–162).	10	1	10	0.25	2.50
8.12(j)(2)	Notification to State Health Officer When Patient Begins Interim Maintenance.	1	20	20	0.33	6.60
8.24	Contents of Appellant Request for Review of Suspension.	2	1	2	0.25	.50
8.25(a)	Informal Review Request	2	1	2	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement.	2	1	2	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review.	2	1	2	1.00	2.00
8.28(c)	Appellant Review File and Written Statement.	2	1	2	5.00	10.00
Sub Total		1,900		33,719		2,507.70
Total		1,954		35,126		2,902.40

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57B, Rockville, MD 20857 *or* email a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by June 20, 2016.

Summer King,

Statistician.

[FR Doc. 2016–09020 Filed 4–18–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0104]

Navigation and Vessel Inspection Circular (NVIC) No. 02–16; Inspection Guidance for Sail Rigging and Masts on Inspected Sailing Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of NVIC 02–16. This Circular provides guidance to vessel owners, riggers, marine surveyors, other marine service providers, and Coast Guard marine inspectors regarding inspection of sail rigging, masts, and associated components for commercial sailing vessels and the use of preventative maintenance as a good marine practice. It provides guidance for the purpose of assisting vessel owners and operators, and U.S. Coast Guard personnel with the inspection and recommended documentation of maintenance for sail rigging and masts on inspected sailing vessels. It is intended to enhance consistency with the Coast Guard inspection process for the commercial sailing fleet.

DATES: NVIC 02–16 is available on April 13, 2016.

ADDRESSES: This NVIC is available at the following Coast Guard Web site: *http://www.uscg.mil/hq/cg5/nvic/.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LCDR James T. Fogle, Office of Commercial Vessel Compliance, Coast Guard, telephone 202—372–1216, email *James.T.Fogle@uscg.mil.*

Dated: April 13, 2016.

Paul F. Thomas,

USCG, Assistant Commandant for Prevention Policy.

[FR Doc. 2016–09022 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0291]

Cooperative Research and Development Agreement: Troposcatter Communications Exploratory Development

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent; request for comments.

SUMMARY: The Coast Guard announces its intent to enter into a Cooperative Research and Development Agreement (CRADA) with Comtech Systems, Inc., to investigate the potential operational use of troposcatter technology. The research includes employment of their Modular Transportable Transmission System (MTTS) in northern Alaska to establish beyond line of sight (BLOS) network links without using existing infrastructure or satellite communications. Specifically, the MTTS will provide a wireless IEEE 802.3 (Ethernet) data link between two locations separated by long distances and elevated terrain. The MTTS will be setup in locations with no shelter/protection from the Northern Alaskan environment. A Pilot Demonstration schedule has been proposed in which Comtech Systems will provide their MTTS to connect two points separated by 68 miles with a 3000 foot elevation in between. The Coast Guard Research and Development Center (R&D Center) will prepare a Pilot Demonstration Assessment Plan and Comtech Systems will operate the equipment for exploratory development over a one week period to collect information on suitability, reliability, maintenance requirements, and ease of use. While the Coast Guard is currently considering partnering with Comtech Systems, Inc., the agency is soliciting public comment on the possible nature of and participation of other parties in the proposed CRADA. In addition, the Coast Guard also invites other potential non-Federal participants to propose similar CRADAs.

DATES: Comments must be submitted to the online docket via *http://www.regulations.gov,* or reach the Docket Management Facility, on or before May 19, 2016.

Synopses of proposals regarding future CRADAs must reach the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) on or before May 19, 2016.

ADDRESSES: Submit comments online at *http://www.regulations.gov* in accordance with Web site instructions.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or wish to submit proposals for future CRADAs, contact LCDR Samuel Nassar, Project Official, C4ISR Branch, U.S. Coast Guard Research and Development Center, 1 Chelsea Street, New London, CT 06320, telephone 860–271–2727, email *samuel.r.nassar@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We request public comments on this notice. Although we do not plan to respond to comments in the **Federal Register**, we will respond directly to commenters and may modify our proposal in light of comments.

Comments should be marked with docket number USCG–2016–0291and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the **Federal Register** Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008). We also accept anonymous comments.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**). Documents mentioned in this notice and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Do not submit detailed proposals for future CRADAs to the Docket Management Facility. Instead, submit them directly to the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**).

Discussion

CRADAs are authorized under 15 U.S.C. 3710(a).[1] A CRADA promotes the transfer of technology to the private sector for commercial use, as well as specified research or development efforts that are consistent with the mission of the Federal parties to the CRADA. The Federal party or parties agree with one or more non-Federal parties to share research resources, but the Federal party does not contribute funding.

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[1] The statute confers this authority on the head of each Federal agency. The Secretary of DHS's authority is delegated to the Coast Guard and other DHS organizational elements by DHS Delegation No. 0160.1, para. II.B.34.

CRADAs are not procurement contracts. Care is taken to ensure that CRADAs are not used to circumvent the contracting process. CRADAs have a specific purpose and should not be confused with procurement contracts, grants, and other type of agreements.

Under the proposed CRADA, the R&D Center will collaborate with one non-Federal participant. Together, the R&D Center and the non-Federal participant will collect information/data for performance, reliability, maintenance requirements, human systems integration and other data on Troposcatter communications technologies. After an initial installation and training, the Coast Guard plans to evaluate designated platforms outfitted with the communications technologies for a period of one week.

We anticipate the Coast Guard's contributions under the proposed CRADA will include the following:

(1) Develop the Demonstration Pilot Assessment Plan to meet the objectives of the CRADA with a diverse set of real-life mission scenarios.

(2) Provide the pilot demonstration support in and around Nome, AK.

(3) Coordinate Pilot demonstration network connectivity between various internet protocol (IP) systems.

(4) Collaborate with non-Federal partners to prepare demonstration documentation including equipment assessments, final report(s), and briefings.

We anticipate that the non-Federal participant's contributions under the proposed CRADA will include the following:

(1) Assist the R&D Center in the development and drafting of all CRADA documents, including the pilot demonstration assessment plan, equipment assessments, final report(s), and briefings.

(2) Provide and maintain the troposcatter communications equipment to ensure the communications link is usable.

(3) Secure, with R&D Center assistance, Special Temporary Authority (STA) to employ the equipment within the desired frequency bands.

(4) Provide technical support, training and maintenance throughout the period of performance to ensure maximum availability and utility of the networks.

The Coast Guard reserves the right to select for CRADA participants all, some, or no proposals submitted for this CRADA. The Coast Guard will provide no funding for reimbursement of proposal development costs. Proposals and any other material submitted in response to this notice will not be returned. Proposals submitted are expected to be unclassified and have no more than five single-sided pages (excluding cover page, DD 1494, JF–12, etc.). The Coast Guard will select proposals at its sole discretion on the basis of:

(1) How well they communicate an understanding of, and ability to meet, the proposed CRADA's goal; and

(2) How well they address the following criteria:

(a) Technical capability to support the non-Federal party contributions described; and

(b) Resources available for supporting the non-Federal party contributions described.

Currently, the Coast Guard is considering Comtech Systems, Inc. for participation in this CRADA. This consideration is based on the fact that Comtech Systems has demonstrated its technical ability as the developer, manufacturer, and integrator of troposcatter transmission equipment. However, we do not wish to exclude other viable participants from this or future similar CRADAs.

This is a technology assessment effort. The goal for the Coast Guard of this CRADA is to better understand the advantages, disadvantages, required technology enhancements, performance, costs, and other issues associated with troposcatter transmission. Special consideration will be given to small business firms/consortia, and preference will be given to business units located in the U.S. This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: March 24, 2016.

Captain Dennis C. Evans,

USCG, Commanding Officer, U.S. Coast Guard Research and Development Center.

[FR Doc. 2016–09034 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0301]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Navigation Safety Advisory Council will meet in Arlington, Virginia to discuss matters relating to maritime collisions, rammings, and groundings, Inland Rules of the Road, International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. These meetings will be open to the public.

DATES: The Navigation Safety Advisory Council will meet on Wednesday, May 4, 2016, from 9:30 a.m. to 5:30 p.m., and on Thursday, May 5, 2016, from 8 a.m. to 5:30 p.m. Please note these meetings may close early if the Council has completed its business.

ADDRESSES: The meeting will be held at the Holiday Inn Arlington at Ballston, 4610 Fairfax Drive, Arlington VA 22203. *https://www.holidayinn.com/hotels/us/en/arlington/wasfx/hoteldetail/directions*

For information on the meeting facility or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Burt Lahn listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Council as listed in the "Agenda" section below. Written comments for distribution to the Council members must be submitted no later than April 26, 2016 if you want Council members to be able to review your comments before the meeting, and must be identified by the docket number, USCG–2016–0301. Written comments may be submitted using Federal eRulemaking Portal: *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact Mr. Lahn for alternate instructions.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action, USCG 2016–0301. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov* insert USCG–2016–0301 in the Search box, press Enter, and then click on the item you wish to view.

A public comment period will be held during the meeting on May 4, 2016, from 5 p.m. to 5:30 p.m. and on May 5, 2016, prior to the close of the meeting. Public presentations may also be given. Speakers are requested to limit their presentation and comments to 10 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. To register as a speaker, contact Mr. Burt Lahn listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions about these meetings, please contact Mr. George Detweiler, the Navigation Safety Advisory Council Alternate Designated Federal Officer, Commandant (CG–NAV–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7418, Washington, DC 20593, telephone 202–372–1566 or email *George.H.Detweiler@uscg.mil* or Mr. Burt Lahn, Commandant (CG–NAV–2), U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE., Stop 7418, Washington, DC 20593, at telephone 202–372–1526 or email *Burt.A.Lahn@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, Title 5 United States Code, Appendix.

The Navigation Safety Advisory Council is an advisory committee authorized in 33 U.S.C. 2073 and chartered under the provisions of the Federal Advisory Committee Act. The Navigation Safety Advisory Council provides advice and recommendations to the Secretary, through the Commandant of the U.S. Coast Guard, on matters relating to prevention of maritime collisions, rammings, and groundings, Inland and International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

Agenda

Wednesday, May 4, 2016: The Navigation Safety Advisory Council will receive presentations on the following topics:

(1) National Oceanic and Atmospheric Administration—Future of Navigation Strategy: National Oceanic and Atmospheric Administration Office of Coast Survey will provide a briefing on National Oceanic and Atmospheric Administration Future of Navigation Strategy;

(2) Coast Guard Future of Navigation initiative: The Council will receive an update on this ongoing initiative that leverages technology in order to optimize the mix of electronic and visual aids to navigation;

(3) Electronic Charting Systems: The Coast Guard will provide an update on the use of Electronic Charting Systems, and brief the Council on the recently published Navigation and Vessel Inspection Circular 01–16; which outlines the use of Electronic Charts and publications in lieu of paper charts, maps, and publications; and

(4) Port Access Route Studies. The Coast Guard will provide an update on Port Access Route Studies. The presentation will include the final report from the Atlantic Coast Port Access Route Study, an update from the ongoing Bering Straights Port Access Route Study, and a briefing on the recently initiated Nantucket Sound Port Access Route Study.

Following the above presentations, the Designated Federal Officer will form subcommittees to continue discussions on the following task statements:

(1) Navigation Safety Advisory Council Task 15–01 Unmanned Maritime Systems Best Practices;

(2) Navigation Safety Advisory Council Task 15–04 Discontinuance of an Aid to Navigation; and

(3) Navigation Safety Advisory Council Task 15–05 Electronic Chart Systems.

Public comments or questions will be taken during the meeting as the Council discusses each issue and prior to the Council formulating recommendations on each issue. There will also be a public comment period at the end of the meeting.

Thursday, May 5, 2016

(1) Subcommittee discussions continued from Wednesday, May 4, 2016;

(2) Subcommittee reports presented to the Council;

(3) New Business; and

a. Summary of Navigation Safety Advisory Council action items.

b. Schedule next meeting date—Fall, 2016.

c. Council discussions and acceptance of new tasks.

A public comment period will be held after the discussion of new tasks. Speakers are requested to limit their comments to 10 minutes each. Public comments or questions will be taken at the discretion of the Designated Federal Officer during the discussion and recommendations, and new business portion of the meeting. Please contact Mr. Lahn, listed in the **FOR FURTHER INFORMATION CONTACT** section, to register as a speaker.

Dated: April 13, 2016.

D.C Barata,

Captain, U.S. Coast Guard, Acting Director, Marine Transportation Systems.

[FR Doc. 2016–09021 Filed 4–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of AmSpec Services, LLC, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of AmSpec Services, LLC, as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec Services, LLC, has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of August 13, 2015.

DATES: *Effective:* The approval of AmSpec Services, LLC, as commercial gauger became effective on August 13, 2015. The next triennial inspection date will be scheduled for August 2018.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that AmSpec Services, LLC, 2308 East Burton St., Sulphur, LA 70663, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. AmSpec Services, LLC is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Maritime Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories

Dated: April 11, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–09074 Filed 4–18–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX16LR000F60100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a renewal of a currently approved information collection (1028–0065).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. This collection consists of 2 forms. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on October 31, 2016.

DATES: To ensure that your comments are considered, we must receive them on or before June 20, 2016.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'Information Collection 1028–0065, Production Estimate, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Sangine, National Minerals Information Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 989, Reston, VA 20192 (mail); 703–648–7720 (phone); or *escottsangine@usgs.gov* (email). You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public. This information will be published in the "Mineral Commodity Summaries," the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

II. Data

OMB Control Number: 1028–0065.

Form Numbers: USGS Forms 9–4042–A and 9–4124–A.

Title: Production Estimate, Two Forms.

Type of Request: Renewal of existing information collection.

Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers.

Respondent's Obligation: None. Participation is voluntary.

Frequency of Collection: Annually.

Estimated Total Number of Annual Responses: 1,761.

Estimated Time per Response: 15 minutes.

Estimated Annual Burden Hours: 440 hours.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are no "non-hour cost" burdens associated with this IC.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Michael J. Magyar,

Associate Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2016–09007 Filed 4–18–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Renewal of Agency Information Collection for Navajo Partitioned Lands Grazing Permits

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for Navajo Partitioned Lands Grazing Permits authorized by OMB Control Number 1076–0162. This information collection expires July 31, 2016.

DATES: Submit comments on or before June 20, 2016.

ADDRESSES: You may submit comments on the information collection to Derrith Watchman-Moore, Office of Trust Services, Branch of Natural Resources, P.O. Box 1060, Gallup, New Mexico 87105; telephone: (505) 863–8221; email: *derrith.watchman-moore@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Derrith Watchman-Moore, *derrith.watchman-moore@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

BIA is seeking comments on the information collection conducted under 25 CFR 161, implementing the Navajo-

Hopi Indian Relocation Amendments Act of 1980, 94 Stat. 929, and the Federal court decisions of *Healing* v. *Jones,* 174 F. Supp.211 (D Ariz. 1959) (Healing I), *Healing* v. *Jones,* 210 F. Supp. 126 (D. Ariz. 1962), aff'd 363 U.S. 758 (1963) (Healing II), *Hopi Tribe* v. *Watt,* 530 F. Supp. 1217 (D. Ariz. 1982), and *Hopi Tribe* v. *Watt,* 719 F.2d 314(9th Cir. 1983).

This information collection allows BIA to receive the information necessary to determine whether an applicant to obtain, modify, or assign a grazing permit on Navajo Partitioned Lands is eligible and complies with all applicable grazing permit requirements. BIA, in coordination with the Navajo Nation, will continue to collect grazing permit information up to and beyond the initial reissuing of the grazing permits, likely within a 1–3 year time period from the date of publication of this notice. The data is collected by electronic global positioning systems and field office interviews by BIA & Navajo Nation staff. The data is maintained by BIA's Navajo Partitioned Lands office. The burden hours for this continued collection of information are reflected in the Estimated Total Annual Hour Burden in this notice.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0162.

Title: Navajo Partitioned Lands Grazing Permits, 25 CFR 161.

Brief Description of Collection: Submission of information is required for Navajo Nation representatives, members, and authorized Tribal organizations to obtain, modify, or assign a grazing permit on Navajo partitioned lands.

Type of Review: Extension without change of currently approved collection.

Respondents: Tribes, Tribal organizations, and individual Indians.

Number of Respondents: 750.

Estimated Number of Responses: 1,500.

Estimated Time per Response: On average, 2 hours.

Frequency of Response: Annually.

Obligation to Respond: A response is required to obtain a benefit.

Estimated Total Annual Hour Burden: 3,000 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–09018 Filed 4–18–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Renewal of Agency Information Collection for Tribal Energy Resource Agreements

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs (IA) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information titled "Tribal Energy Resource Agreements" (TERAs) under the Office of Indian Energy and Economic Development Office (IEED) authorized by OMB Control Number 1076–0167. This information collection expires July 31, 2016. IA is also seeking comments as to how a reduction of burden could be achieved.

DATES: Submit comments on or before June 20, 2016.

ADDRESSES: You may submit comments on the information collection and on burden reduction to Ms. Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action, Office of the Assistant Secretary—Indian Affairs, U.S. Department of the Interior, telephone: (202) 273–4680; email: *elizabeth.appel@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth K. Appel, (202) 273–4680.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Energy Policy Act of 2005, 25 U.S.C. 3503 authorizes the Secretary of the Interior to approve individual Tribal Energy Resource Agreements (TERAs). The intent of these agreements is to promote Tribal oversight and management of energy and mineral resource development on Tribal lands and further the goal of Indian self-determination. A TERA offers a Tribe an alternative for developing energy-related business agreements and awarding leases and granting rights-of-way for energy facilities without having to obtain further approval from the Secretary.

This information collection conducted under TERA regulations at 25 CFR 224 will allow IEED to determine the capacity of Tribes to manage the development of energy resources on Tribal lands. Information collection:

- Enables IEED to engage in a consultation process with Tribes that is designed to foster optimal pre-planning of development proposals and speed up the review and approval process for TERA agreements;
- Provides wide public notice and opportunity for review of TERA agreements by the public, industry, and government agencies;
- Ensures that the public has an avenue for review of the performance of Tribes in implementing a TERA;
- Creates a process for preventing damage to sensitive resources as well as ensuring that the public has fully communicated with the Tribe in the petition process;
- Ensures that a Tribe is fully aware of any attempt by the Department of the Interior to resume management authority over energy resources on Tribal lands; and
- Ensures that the Tribal government fully endorses any relinquishment of a TERA.

II. Request for Comments on Collection of Information

The Assistant Secretary—Indian Affairs requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Request for Comments on Burden Reduction

The Assistant Secretary—Indian Affairs also requests your comments on ways to revise and reduce the burden of the governing regulations for TERAs under 25 CFR 224. Currently, the total annual hour burden for this information collection is 10,752 hours with an estimated time per response from 32 to 1,080 hours. Please submit comments on the following topics to the contact listed in the **ADDRESSES** section of this notice: (1) The aspects of this information collection you identify as having the greatest burden, (2) Whether these burdensome aspects are the likely reason for an underutilization of TERAs; (3) Whether these burdensome aspects are required under statute or regulation, and (4) Any opportunities to reduce the burden of information collection, including but not limited to opportunities to reduce burdens associated with the application process by issuing guidance or instructions for prospective applicants.

Please also specify any language within the regulations that you believe should be adjusted in order to reduce the burden associated with this information collection. Additionally, if you believe that an adjustment to statutory language would reduce the burden associated with this information collection, please specifically identify this language.

III. Data

OMB Control Number: 1076–0167.

Title: Tribal Energy Resource Agreements.

Brief Description of Collection: Submission of this information is required for Indian Tribes to apply for, implement, reassume, or rescind a TERA that has been entered into in accordance with the Energy Policy Act of 2005 and 25 CFR 224. This collection also requires the Tribe to notify the public of certain actions.

Type of Review: Extension without change of currently approved collection.

Respondents: Federally recognized Indian Tribes.

Number of Respondents: 14.

Estimated Time per Response: Ranges from 32 hours to 1,080 hours.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 10,752 hours.

Obligation to Respond: A response is required to obtain a benefit.

Estimated Total Non-hour Cost Burden: $48,200.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–09019 Filed 4–18–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON02000 L51010000.ER0000 LVRWC16C8700 16X]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Blue Valley Land Exchange, Grand and Summit Counties, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Kremmling Field Office, Kremmling, Colorado intends to prepare an Environmental Impact Statement (EIS) to evaluate a proposed land exchange under section 206 of FLPMA, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until May 19, 2016. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/co/st/en/fo/kfo.html.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Blue Valley Land Exchange by any of the following methods:

- *Web site: http://www.blm.gov/co/st/en/fo/kfo.html*
- *Email: kfo_webmail@blm.gov*
- *Fax:* 970–724–3006
- *Mail:* 2103 E. Park Avenue, P.O. Box 68, Kremmling, CO 80459

Documents pertinent to this proposal may be examined at the Kremmling Field Office.

FOR FURTHER INFORMATION CONTACT: Monte Senor, Assistant Field Manager; telephone 970–724–3002; see address above; email *kfo_webmail@blm.gov.* Contact Annie Sperandio at 970–724–3062 to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: After coordination with the BLM, Galloway, Inc., owner of Blue Valley Ranch, submitted a land exchange proposal to the BLM whereby approximately 1,489 acres of Federal lands managed by the BLM in Grand County, Colorado would be conveyed to Blue Valley Ranch in exchange for approximately 1,832 acres of non-Federal lands in Summit and Grand counties, Colorado. Of the 1,832 acres, approximately 300 acres would be acquired within the White River National Forest administrative boundary. The Forest Service will participate as a cooperating agency on the EIS.

Pursuant to section 206 of the Federal Land Management and Policy Act of 1976, as amended, the proposed land exchange must be determined to be in the public interest and appraisals of the Federal and non-Federal parcels must show that the exchange parcels are equal in value. The EIS will provide BLM with the information necessary to make these determinations. The BLM has found that the proposed land exchange is appropriate for processing and is in conformance with land tenure decisions in the Kremmling Resouce Management Plan.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the preliminary issues from internal scoping and public comments received on the Notice of Exchange Proposal released in June 2005. The issues that were raised during the informal scoping process and feasibility analysis include changes to public fishing access, perceived changes to float boating on the Blue River, concerns about changes to public access for hunting, and concerns about large land owners realizing a benefit from the exchange. The BLM will address these preliminary issues, along with the other issues identified during the public scoping process and preparation of the EIS. The BLM will identify, analyze and require mitigation, as appropriate, to address the reasonably foreseeable impacts to resources if this project is approved. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time and compensatory mitigation. These potential measures may be considered at multiple scales, including the landscape-scale.

The BLM will use and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed Blue Valley Land Exchange will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed Blue Valley Land Exchange are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7

Ruth Welch,
BLM Colorado State Director.

[FR Doc. 2016–09040 Filed 4–18–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X.LLAZ956000.L14400000.BJ0000.LXSSA225000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Arizona.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the subdivision of section 25, Township 3 North, Range 5 East, accepted December 10, 2015, and officially filed December 11, 2015, for Group 1141, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the south and west boundaries of the Fort McDowell Indian Reservation and a portion of the subdivisional lines defining the north boundary of the Salt River Pima Maricopa Indian Community, Township 3 North, Range 6 East, accepted December 10, 2015, and officially filed December 11, 2015, for Group 1141, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, the subdivision of section 30, and a metes-and-bounds survey in section 30, Township 3 North, Range 6 East, accepted December 10, 2015, and officially filed December 11, 2015, for Group 1141, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of a portion of the south boundary of the Fort McDowell Indian Reservation and a portion of the west boundary, Township 3 North, Range 7 East, accepted December 10, 2015, and officially filed December 11, 2015, for Group 1141, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat representing the dependent resurvey of Homestead Entry Survey No. 88, and the survey of Small Tracts Act Survey AZ. No. 12, Township 13 North, Range 10 East, accepted November 17, 2015, and officially filed November 18, 2015, for Group 1123, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the south boundary of Township 14 North, Range 10 East, and the dependent resurvey of Homestead Entry Survey No. 178, Townships 13 and 14 North, Range 10 East, accepted January 7, 2016, and officially filed January 8, 2016, for Group 1123, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the subdivision of section 5,Township 14 North, Range 10 East, accepted November 17, 2015, and officially filed November 18, 2015, for Group 1123, Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a Hopi-Navajo Partion Line, Segment "D", the survey of a portion of the south boundary, the survey of the east and north boundaries, a portion of the subdivisional lines, and the subdivision of certain sections, Township 35 North, Range 15 East, accepted January 13, 2016, and officially filed January 14, 2016, for Group 1133, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The plat representing the corrective resurvey of portions of the north boundary and a portion of the subdivisional lines, and the subdivision of sections 1 and 12, Township 21

North, Range 29 East, accepted November 17, 2015, and officially filed November 19, 2015, for Group 957, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs.

The supplemental plat showing the correction to the location of Mineral Survey No. 542, and the subsequent amended lotting, section 33, Township 24 North, Range 17 West, accepted September 9, 2015, and officially filed September 10, 2015, for Group 9109, Arizona.

This plat was prepared at the request of the Bureau of Land Management.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Gerald T. Davis,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2016–09032 Filed 4–18–16; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–013]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: April 21, 2016 at 1:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–1314 (Preliminary) (Phosphor Copper from Korea). The Commission is currently scheduled to complete and file its determination on April 25, 2016; views of the Commission are currently scheduled to be completed and filed on May 2, 2016.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 13, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–09095 Filed 4–15–16; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0008]

The Benzene Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Benzene Standard (29 CFR 1910.1028).

DATES: Comments must be submitted (postmarked, sent, or received) by June 20, 2016.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2013–0008, Occupational Safety and Health Administration U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2013–0008) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The

Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified in the Benzene Standard protect workers from the adverse health effects that may result from occupational exposure to benzene. The major information collection requirements in the Standard include conducting worker exposure monitoring, notifying workers of the benzene exposure, implementing a written compliance program, implementing medical surveillance for workers, providing examining physicians with specific information, ensuring that workers receive a copy of their medical surveillance records, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the worker who is the subject of the records, the worker's representative, and other designated parties.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting an adjustment increase of 18,726 burden hours (from 126,183 hours to 144,909 hours). The adjustment increase is the result of an increase in the number of workers receiving medical examinations. There was a $1,826,862 increase in the cost under Item 13 from $8,984,612 to $10,811,474 as result of an increase in the number of workers receiving medical examinations and the cost of a medical examination.

Type of Review: Extension of a currently approved collection.

Title: Benzene Standard (29 CFR 1910.1028).

OMB Control Number: 1218–0129.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 12,148.

Frequency of Response: On occasion.

Total Responses: 297,672.

Average Time per response: Varies from 5 minutes (.08 hour) for employers to maintain records to 4 hours for workers to receive referral medical exams.

Estimated Total Burden Hours: 144,909.

Estimated Cost (Operation and Maintenance): $10,811,474.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile; or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2013–0008). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 13, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–08915 Filed 4–18–16; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

NOTICE: Schedule change.

DATE AND TIME: The Legal Services Corporation is changing the dates and times of the Governance and Performance Review Committee and the Finance Committee meetings scheduled during the April meeting of its Board of Directors. These meetings were noticed in the Monday, April 11, 2016 issue of the **Federal Register**, 81 FR 21400. The Finance Committee meeting will be held on Sunday, April 17, 2016, commencing at 3:00 p.m. EDT. The Governance and Performance Review Committee meeting will be held on Monday, April 18, 2016, commencing at 3:15 p.m. EDT. All other information about the meetings remains as stated in the prior notice.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: April 15, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–09098 Filed 4–15–16; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, May 3, 2016.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTER TO BE CONSIDERED:

8619C Railroad Accident Report—Washington Metropolitan Area Transit Authority (WMATA) L'Enfant Plaza Station Electrical Arcing and Smoke Accident. January 12, 2015 (DCA15FR004)

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Wednesday, April 27, 2016.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Peter Knudson at (202) 314–6100 or by email at *peter.knudson@ntsb.gov.*

Dated: Friday, April 15, 2016.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2016–09142 Filed 4–15–16; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Metallurgy & Reactor Fuels will hold a meeting on May 3, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 3, 2016—1:00 p.m. Until 5:00 p.m.

The Subcommittee will discuss Draft Regulatory Guide DG–1229, "Regulatory Guidance on the Alternate Pressurized Thermal Shock Rule" and Draft Report NUREG–2163, "Technical Basis for Regulatory Guidance on the Alternate Pressurized Thermal Shock Rule." The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–5375 or Email: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: April 6, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–09073 Filed 4–18–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–26; NRC–2015–0233]

Pacific Gas & Electric Company, Diablo Canyon Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) reviewed an application by Pacific Gas and Electric (PG&E or the licensee) for amendment of Materials License No. SNM–2511, which authorizes the storage of spent nuclear fuel at the Diablo Canyon Independent Spent Fuel Storage Installation. The licensee requested the removal of preferential loading references from the Technical Specifications (TS). The licensee also requested that the NRC approve several editorial corrections to the TS to improve the readability and human factors usage of the TS.

DATES: April 19, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0233 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0233. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS,

please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6877, email: *William.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION: By letter dated September 16, 2015 (ADAMS Accession No. ML15259A590), as supplemented January 27, 2016 (ADAMS Accession No. ML16027A357), PG&E submitted a license amendment request (LAR) to the NRC in accordance with section 72.56 of title 10 of the *Code of Federal Regulations* (10 CFR). The LAR requested that the TS of Materials License No. SNM–2511 be amended by (a) removing references to preferential loading from the TS, and (b) making editorial corrections to the TS, to improve their readability and human factors usage. The NRC staff (staff) docketed the application, and in accordance with 10 CFR 72.46(b)(1), a Notice of Proposed Action and a Notice of Opportunity for Hearing was published in the **Federal Register** on October 30, 2015 (80 FR 66938). No requests for a hearing or leave to intervene were submitted.

The staff has completed its review of the September, 2015 LAR, and has determined that it complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), as well as the NRC's rules and regulations. As required by the Act and the NRC's rules and regulations in 10 CFR Chapter 1, the staff made the appropriate findings which are contained in a Safety Evaluation Report (ADAMS Accession No. ML16048A478). The NRC has thus granted the LAR and has accordingly issued Amendment No. 5 to Materials License No. SNM–2511.

Environmental Consideration

The staff's environmental review of the proposed action is set forth in the Safety Evaluation Report. The staff found that the LAR met the categorical exclusion criteria in 10 CFR 51.22(c)(11). Specifically, the staff determined that granting the LAR (i) does not produce a significant change in either the type or amount of effluents released to the environment; (ii) does not produce a significant increase in occupational radiation exposure; (iii) does not have significant construction impacts; and (iv) does not produce a significant increase in the potential for or consequences from radiological accidents. Accordingly, pursuant to 10 CFR 51.22(b), neither an environmental assessment nor an environmental impact statement was required for this proposed action. This amendment was effective upon issuance.

Dated at Rockville, Maryland, this 7th day of April, 2016.

For the Nuclear Regulatory Commission.

Steve Ruffin,

Acting Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2016–09041 Filed 4–18–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390; NRC–2016–0076]

Completion Date of Cyber Security Plan Implementation Milestone 8; Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to the Tennessee Valley Authority, for operation of the Watts Bar Nuclear Plant (WBN), Unit 1. The proposed amendment would revise the WBN, Unit 1, Cyber Security Plan (CSP) implementation schedule for Milestone 8 and would revise the associated license condition in the Facility Operating License. The amendment request contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Submit comments by May 19, 2016. Requests for a hearing or petition for leave to intervene must be filed by June 20, 2016. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by April 29, 2016.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0076. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Robert Schaaf, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6020, email: *Robert.Schaaf@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0076 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0076.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The License Amendment Request (WBN–TS–16–04) to Change the Completion Date of Cyber Security Plan Implementation Milestone 8 is available in ADAMS under Accession No. ML16064A488.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One

White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2016–0076 and "Watts Bar Nuclear Plant, Unit 1, application dated March 4, 2016, license amendment request to change the completion date of Cyber Security Plan Implementation Milestone 8," in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to the Tennessee Valley Authority, for operation of the WBN, Unit 1, located in Rhea County, Tennessee.

The proposed amendment would revise the WBN, Unit 1, CSP implementation schedule for Milestone 8 and would revise the associated license condition in the Facility Operating License.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the CSP Milestone 8 implementation date. This change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change is an extension to the completion date of implementation Milestone 8, that in itself does not require any plant modifications which affect the performance capability of the structures, systems, and components relied upon to mitigate the consequences of postulated accidents and have no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the CSP Implementation Schedule. This proposed change to extend the completion date of implementation Milestone 8 does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems and components relied upon to mitigate the consequences of postulated accidents. This change also does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed change extends the CSP Implementation Schedule. Because there is no change to these established safety margins as result of this change, the proposed change does not involve a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a No Significant Hazards Consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief

Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by June 20, 2016. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by June 20, 2016.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated March 4, 2016.

Attorney for licensee: Ms. Sherry A. Quirk, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

NRC Branch Chief: Benjamin Beasley.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1]

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[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these

The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the dates the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 12th day of April, 2016.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).

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procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2016–09042 Filed 4–18–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 4, 2016, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 4, 2016—12:00 p.m. Until 1:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: April 6, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–09078 Filed 4–18–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting

DATE: April 18, 25, May 2, 9, 16, 23, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of April 18, 2016

Tuesday, April 19, 2016

9:30 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting) (Contact: Paul Michalak: 301–415–5804)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of April 25, 2016—Tentative

There are no meetings scheduled for the week of April 25, 2016.

Week of May 2, 2016—Tentative

There are no meetings scheduled for the week of May 2, 2016.

Week of May 9, 2016—Tentative

There are no meetings scheduled for the week of May 9, 2016.

Week of May 16, 2016—Tentative

Tuesday, May 17, 2016

9:00 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dai-ichi Accident (Public Meeting) (Contact: Kevin Witt: 301–415–2145)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Thursday, May 19, 2016

10:00 a.m. Briefing on Security Issues (Closed Ex. 1)

1:30 p.m. Briefing on Security Issues (Closed Ex. 1)

Week of May 23, 2016—Tentative

There are no meetings scheduled for the week of May 23, 2016.

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov*.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov*.

Dated: April 13, 2016.

Denise McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–08954 Filed 4–14–16; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant License Renewal

The ACRS Subcommittee on Plant License Renewal will hold a meeting on May 4, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 4, 2016—1:00 p.m. Until 5:00 p.m.

The Subcommittee will review the Grand Gulf Nuclear Station, Unit 1, License Renewal Application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Entergy Operations, Inc., and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or Email: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: April 6, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–09094 Filed 4–18–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2016–3; Order No. 3238]

Public Inquiry on Commission Report to the President and Congress

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a public inquiry to receive comments regarding the Commission's second report to the President and Congress pursuant to section 701 of the Postal Accountability and Enhancement Act. This notice informs the public of this proceeding, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 14, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Legal Requirements and Background
III. Areas of Interest
IV. Conclusion
V. Ordering Paragraphs

I. Introduction

The Commission establishes Docket No. PI2016–3 for the purpose of obtaining public comment on its second report to the President and Congress pursuant to section 701 of the Postal Accountability and Enhancement Act of 2006.[1]

II. Legal Requirements and Background

A. Statutory Requirements

Under the PAEA, the Commission is required at least every 5 years to submit a report to the President and Congress concerning (1) the operation of the amendments made by this Act; and (2) recommendations for any legislation or other measures necessary to improve the effectiveness or efficiency of the postal laws of the United States.

PAEA section 701(a). Before submitting the "701 Report," the Commission must afford the Postal Service a reasonable opportunity to review the report and submit written comments. PAEA section 701(b).

B. 2011 Report

In 2011, the Commission submitted its first section 701 report.[2] The 2011 Report focused on three main areas involved with the implementation of the PAEA: (1) The Postal Service's financial condition; (2) rate and service matters; and (3) improvements to Commission processes. 2011 Report at 1–2.

In its review of the Postal Service's financial condition, the Commission recommended that Congress adjust the Postal Service Retiree Health Benefit Fund and suggested several alternative payment options intended to alleviate Postal Service liquidity issues. *Id.* at 21–25. The 2011 Report also discussed the Postal Service's annual financial reporting requirements and Sarbanes-Oxley Act compliance, finding that the PAEA requirements resulted in improved transparency and greater cost savings. *Id.* at 25–27.

The 2011 Report also included several recommendations regarding rate and service matters. First, the Commission recommended that the PAEA be amended to allow the Postal Service to add new market dominant classes of mail. *Id.* at 44. Second, the 2011 Report recommended that if Congress chose to allow the Postal Service to introduce new nonpostal services, it should include adequate safeguards to reduce the potential for the introduction of unprofitable products. *Id.* at 50. The Commission suggested that new nonpostal products be subject to review under 39 U.S.C. 404(e)(3), the same regulatory review applied to determining whether to "grandfather" a nonpostal service. *Id.* Although the Commission found that the PAEA constraints on market tests were effective and not unduly burdensome, the 2011 Report included as its third recommendation that Congress consider raising the maximum revenue limitation on experimental market test products to further bolster Postal Service revenue streams. *Id.* at 70. Fourth, the Commission recommended that Congress clarify the PAEA to require the Postal Service to consult with the Commission not only in establishing service standards for market dominant products, but also when seeking to change existing service standards. *Id.* at 64–65. The Commission did not recommend any changes to existing procedures for price adjustments and indicated that it had not vetted this concept, stating that Congress should consider allowing the Postal Service increased pricing flexibility based on improvements to quality of service. *Id.* at 40. The Commission stated that service quality pricing authority would create "an incentive for the Postal Service to increase the service performance of its products." *Id.*

Finally, the Commission made three major recommendations aimed at developing enhancements to improve Commission processes. The first was a recommendation that Congress require the Postal Service to provide the Commission regular reports on retail network plans and activities. *Id.* at 77. The second recommendation was to clarify the scope of the Commission's appellate review of post office closings, including a definition of "post office" that would encompass all Postal Service-operated retail facilities. *Id.* at 77–78. The third recommendation was that Congress consider providing statutory language allowing the Postal Service expedited consideration of requests for advisory opinions by the Commission.[3]

Since submitting its 2011 Report, the Commission has benefitted from its additional years of experience implementing the provisions of the PAEA. The Commission also recognizes the value of input from public stakeholders on matters concerning the operation of the provisions of the PAEA and ideas for legislative reform. Accordingly, the Commission invites public comment for consideration in preparing the upcoming 701 Report.

III. Areas of Interest

The requirements of section 701 allow the Commission significant discretion when providing recommendations to the President and Congress. The Commission is thus empowered to consider the PAEA amendment generally, as well as provide any appropriate recommendations related to the operations of the amendment.

However, to assist the public in focusing its comments and in furtherance of the Commission's mission of enhancing transparency and accountability of the Postal Service, the Commission has identified several topics that were either highlighted in the 2011 Report and not yet resolved, or the Commission has identified as potential areas of interest. Interested parties are invited to comment on any of the issues listed below, as well as any other pertinent areas related to the operation of PAEA amendments.

A. Postal Service Financial Situation

Despite a slight improvement in its liquidity from 2014, the Postal Service continues to face significant financial challenges ahead. In its initial 701 Report issued in 2011, the Commission made several recommendations aimed at strengthening the Postal Service's financial situation. 2011 Report at 2–3. Subsequent to the 701 Report, the Commission issued reports highlighting the Postal Service's continued financial struggles.[4] In its most recent review, the Commission found fundamental balance sheet issues with the Postal Service and made several additional findings.[5]

In sum, while the Postal Service's cash position is at the highest level since Fiscal Year (FY) 2007, significant balance sheet liabilities and off-balance sheet unfunded liabilities for pension and annuitant health benefits threaten the improvements in liquidity. *See* FY 2015 Financial Report at 3. In addition to requesting comments tied to specific parts of the PAEA as outlined below, the Commission also welcomes any comments or suggestions about provisions of the PAEA that impact the overall financial position of the Postal Service as described above.

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[1] Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006), section 701.

[2] Postal Regulatory Commission, Section 701 Report, Analysis of the Postal Accountability and Enhancement Act of 2006, September 22, 2011 (2011 Report).

[3] *Id.* at 83–84. As noted below in section III.H, the Commission amended its internal procedures for considering requests for advisory opinions in 2014. *See* Docket No. RM2012–4.

[4] *See, e.g.,* Postal Regulatory Commission, Analysis of the United States Postal Service Financial Results and 10–K Statement for Fiscal Year 2014, Revised April 10, 2014.

[5] Postal Regulatory Commission, Analysis of the United States Postal Service Financial Results and 10–K Statement, March 29, 2016, at 3–4 (FY 2015 Financial Report).

B. Market Dominant Rate System

Perhaps chief among the amendments of the PAEA are the provisions on the establishment of a modern system for regulating rates and classes for market dominant products. *See* 39 U.S.C. 3622. Although this system is subject to a 10-year review pursuant to 39 U.S.C. 3622(d)(3), the 701 Report also contemplates reviewing this system. The Commission promulgates regulations with respect to this system of regulating rates and classes for market dominant products in accordance with PAEA directives. *See* 39 CFR 3010. Issues for consideration in the 701 Report might include: The financial success of the ratemaking system; challenges faced as a result of the system; a review of rate adjustments; mail classification; or compliance with the Sarbanes-Oxley Act. Recent rate case dockets include market dominant price adjustments,[6] as well as an exigent rate adjustment.[7] Given these dockets, the Commission welcomes comments on the effectiveness and challenges of the current market dominant rate system administered by the Commission.[8]

One potential area of interest associated with the market dominant rate system is worksharing. Workshare discounts provide reduced rates for mailers based on the costs avoided as a result of the mailer performing an activity that would otherwise be performed by the Postal Service. Under the PAEA, the Commission must review workshare discounts to ensure that the discounts do not exceed the Postal Service's avoided costs, subject to limited exceptions. 39 U.S.C. 3622(e)(2). Legally, workshare discounts are only bound by this ceiling; the Postal Service is not bound by this provision to increase a workshare discount that is less than avoided costs. A discussion of noncompliant workshare discounts is typically included in the Commission's Annual Compliance Determination (ACD).[9]

The Commission welcomes comments on the current operation of the provisions regarding workshare discounts, as well as insights on how the discounts and exceptions have functioned in practice.

C. Competitive Rate System

The PAEA also tasks the Commission with the regulation of rates for competitive products. *See* 39 U.S.C. 3633. The Commission must ensure that market dominant products do not subsidize competitive products, that each competitive product covers its costs, and that competitive products collectively cover an appropriate share of institutional costs. *Id.* The current appropriate share is a minimum of 5.5 percent of the Postal Service's total institutional costs. 39 CFR 3015.7(c). The Commission uses this framework to evaluate Postal Service requests for changes in competitive product rates of general applicability.[10] In 2012, the Commission conducted its first review of the institutional costs contribution requirement.[11] *See* 39 U.S.C. 3633(b). This review is to be conducted every 5 years. The Commission welcomes comments on the statutory framework for review of competitive product rates.

Section 703(a) of the PAEA required the Federal Trade Commission (FTC) to submit a comprehensive report identifying federal and state laws that apply differently to the Postal Service with respect to competitive products.[12] The Commission seeks comment on the FTC Report's findings, including those regarding the postal and mailbox monopolies and the competitive products industry.

D. Negotiated Service Agreements

The Commission reviews negotiated service agreements (NSAs) for both competitive[13] and market dominant products.[14] NSAs for competitive products make up the overwhelming majority of all NSAs. The Commission reviews competitive NSAs to ensure: (1) That the competitive product is not subsidized by market dominant products; (2) that the NSA will cover its attributable costs; and (3) that competitive products as a whole cover an appropriate share of institutional costs. 39 U.S.C. 3633. The Commission invites comments on the current legal requirements for NSAs.

E. Post Office Closing/Consolidation Procedures

The Commission anticipates that its 701 Report will include a discussion of the procedures for appeals of Postal Service determinations to close or consolidate post offices. Under the PAEA, the Postal Service must consider, prior to closing or consolidating a post office, the effect on the community, the effect on its employees, economic savings, and consistency with a policy aimed toward providing a maximum degree of service to rural areas and communities. 39 U.S.C. 404(d)(2). When considering a timely appeal, the Commission is required to set aside Postal Service determinations found to be arbitrary or capricious, without observance of procedure required by law, or unsupported by evidence on the record. 39 U.S.C. 404(d)(5). The Commission's rules governing these appeals are located at 39 CFR part 3025.

Docket No. PI2016–2 is a pending Commission proceeding concerning the scope of the Commission's authority to review certain Postal Service determinations of closings and consolidations. At issue is whether a relocation or rearrangement of postal services is subject to Commission review. Also at issue is whether the Commission has authority to review the closing of contract postal units.

The Commission welcomes comments on the scope of the Commission's authority to review Postal Service determinations under the framework and procedures set forth in the PAEA for appeals of post office closings and consolidations.

F. Service Standards

The PAEA required that the Postal Service, in consultation with the Commission, establish service standards for market dominant products. 39 U.S.C. 3691(a). These standards and procedures are located at 39 CFR part 3055. The regulations outline the annual and periodic reporting of service performance achievements for each market dominant product. An assessment of service performance results for FY 2015 is included in the Commission's latest ACD.[15]

A public inquiry docket pertaining to improvements to service performance measurement data is currently pending before the Commission.[16] The Commission recently updated its Web site[17] to provide service performance information to the public in a more readily accessible format. All service performance-related reports and dockets are available under a tab titled "Reports/Data Service Reports." The Commission urges commenters to review background information on service standards and performance and welcomes comments on issues not already raised in Docket No. PI2016–1.

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[6] *See, e.g.,* Docket Nos. R2016–2 and R2015–4.

[7] *See* Docket No. R2013–11.

[8] For a discussion of negotiated service agreements for both market dominant and competitive products, *see* section III.D below.

[9] *See, e.g.,* Docket No. ACR2014, Annual Compliance Determination, March 27, 2015, at 8–32.

[10] *See, e.g.,* Docket No. CP2016–9, Order No. 2814, Order Approving Changes in Rates of General Applicability for Competitive Products, November 13, 2014.

[11] *See* Docket No. RM2012–3, Order No. 1449, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs, August 23, 2012.

[12] Federal Trade Commission, Accounting for Laws that Apply Differently to the United States Postal Service and Its Private Competitors: A Report by the Federal Trade Commission, December 2007 (FTC Report) (*available at https://www.ftc.gov/reports/accounting-laws-apply-differently-united-states-postal-service-its-private-competitors*).

[13] *See* 39 CFR 3015.5.

[14] *See* 39 CFR 3010.40.

[15] Docket No. ACR2015, Annual Compliance Determination, March 28, 2016, at 94–146.

[16] Docket No. PI2016–1, Order No. 2791, Notice Establishing Docket Concerning Service Performance Measurement Data, October 29, 2015.

G. Nonpostal Services

The PAEA revoked the Postal Service's authority to offer new nonpostal services. *See* 39 U.S.C. 404(e)(2). The Commission reviewed the Postal Service's existing nonpostal services and designated them market dominant, competitive, or experimental products, in accordance with 39 U.S.C. 404(e)(5). Currently, the Postal Service offers two market dominant nonpostal services and nine competitive nonpostal products.[18] The Commission welcomes comments on issues related to nonpostal services, particularly, whether the Postal Service should be permitted to offer them in the future and, if so, whether and how the Commission should review new nonpostal services.

H. The Postal Service Fund and the Postal Service Competitive Products Fund

The PAEA updated the guidelines for the Postal Service to utilize a separate Treasury fund to be made available for payment of costs attributable and allocable to competitive products, and for deposits of revenues and other receipts from competitive products (the Postal Service Competitive Products Fund, hereinafter "Competitive Products Fund"). 39 U.S.C. 2011(a)(b). The Competitive Products Fund is intended to operate separately from the Postal Service Fund (Postal Fund). *See* 39 U.S.C. 2003. The Postal Service provides an annual report to the Secretary of the Treasury concerning the operation of the Competitive Products Fund. 39 U.S.C. 2011(h)(2)(D)(i). Reporting material is also filed with the Commission each year in the ACD. The Competitive Products Fund reporting information for FY 2015 is available on the Commission's Web site.[19] The Commission invites comments on the operation of the Postal Fund and Competitive Products Fund to the extent they are not duplicative of matters raised within Docket No. RM2016–2.

The Commission also reviews the Postal Service's annual calculation of the assumed Federal income tax on competitive products income pursuant to 39 U.S.C. 3634.[20] The Commission's regulations require that the Postal Service develop a Competitive Products Income Statement for each fiscal year. 39 CFR 3060.21. The Commission reviews the calculation for compliance with Chapter 1 of the Internal Revenue Code. If the assumed taxable income from competitive products in a fiscal year is positive, the Postal Service must transfer the assumed Federal income tax amount to the Postal Service Fund no later than January 15 of the following fiscal year. 39 CFR 3060.43(b). The Commission invites comments on the effectiveness of the requirements for the annual computation of the assumed Federal income tax on competitive products income.

I. Advisory Opinion Process

Section 3661 of title 39 requires the Postal Service to seek an advisory opinion from the Commission whenever it determines that there should be a change in the nature of postal services which will generally affect service on a nationwide basis. In 2014, the Commission revised its rules of procedure for these advisory opinion requests, referred to as "N-cases."[21] The primary objective of the adoption of the Commission's new procedural rules was "to establish a procedural framework in which advisory opinions could be issued within 90 days of the filing of a Postal Service request." Order No. 2080 at 6. The PAEA requires "an opportunity for hearing on the record under sections 556 and 557 of title 5" before the Commission issues an opinion. 39 U.S.C. 3661(c). Given this requirement, the revised rules preserve the opportunity for participants to request a formal hearing on Postal Service proposals.

Since the adoption of the new N-case procedural rules, the Postal Service has filed no request for an advisory opinion on the nature of postal services. Nevertheless, the Commission welcomes comments on the advisory opinion process, including the advisability of preserving the opportunity for a hearing on the record in the PAEA.

J. Market Tests

The PAEA grants the Postal Service authority to conduct market tests of experimental products. 39 U.S.C. 3641(a). The Commission reviews market tests to ensure that: (1) The product is significantly different than all products offered by the Postal Service within the prior 2 years; (2) the product will not create an unfair competitive advantage for the Postal Service or any mailer; and (3) the Postal Service identifies the product as either market dominant or competitive. 39 U.S.C. 3641(b). The Commission also ensures compliance with the rules set forth at 39 CFR 3035. All notices of market tests must include a data collection plan including revenue, attributable costs, and volumes, but the Commission may request additional data as it deems appropriate. 39 CFR 3035.3. Market tests may not exceed 24 months in duration, although the Postal Service may request an extension of no more than 12 months. 39 CFR 3035.10. Total anticipated revenues for a market test must not exceed $10 million in any fiscal year, as adjusted for the change in the Consumer Price Index. 39 CFR 3035.15.

The last notice of a market test was authorized by the Commission on October 23, 2014.[22] The experimental product, Customized Delivery, was approved while a request for an exemption from the $10 million limitation was denied as premature. The Commission welcomes comments on the procedures for review of Postal Service notices of market tests of experimental products.

K. Universal Service Obligation and the Postal Monopoly

The Commission's report is required to include any recommended changes to the universal service obligation (USO) and the postal monopoly. PAEA section 702(b)(1). The Commission must include the perceived effects of the recommended changes, as well as the costs and benefits of the postal monopoly under current law. PAEA section 702(b)(2).

Each year, the Commission includes a discussion of costs of the USO and the value of the postal monopoly in the Annual Report to the President and Congress. For the most recent estimates, please refer to the Annual Report for FY 2015.[23]

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[17] The Commission's Web site is *available at http://www.prc.gov.*

[18] Mail Classification Schedule, sections 1700.2 and 2700.2.

[19] Docket No. ACR2015, Library Reference USPS–FY15–39, December 29, 2015.

[20] 39 CFR 3060.42; *see* Docket No. T2016–1 and Docket No. T2015–1.

[21] Docket No. RM2012–4, Order Adopting Amended Rules of Procedure for Nature of Service Proceedings Under 39 U.S.C. 3661, May 20, 2014 (Order No. 2080).

[22] Docket No. MT2014–1, Order No. 2224, Order Authorizing Customized Delivery Market Test, October 23, 2014.

[23] Postal Regulatory Commission, Annual Report to the President and Congress, Fiscal Year 2015, January 6, 2016.

In 2008, pursuant to PAEA section 702(a), the Commission issued an in-depth report on universal postal service and the postal monopoly.[24] The USO Report reviews the historical development of the USO and postal monopoly, universal service and monopoly laws of other countries, economic considerations, needs and expectations of the United States public, policy options, and Commission recommendations. The Commission invites comments and recommendations regarding the USO and the postal monopoly.

L. Requirement of a Public Representative

The Commission must designate a public representative in all proceedings on a case-by-case basis. *See* 39 U.S.C. 505; 39 CFR 3002.14. The public representative serves the interest of the general public in these proceedings, and is subject to ex parte communication restrictions with the Commission for those proceedings. The Commission welcomes comments on the utility of the public representative in Commission proceedings, and any improvements the Commission should consider to improve the public representative program.

M. Requirement of Commission Inspector General

The Commission's Office of the Inspector General has duties related to the oversight of Commission programs and operations. *See* 39 CFR 3002.16. The Inspector General reports to Congress and the Commission on a bi-annual basis its activities related to audits, inspections, and other evaluations.[25] The Commission welcomes comment on the Office of the Inspector General, and any perspectives on the cost benefit or effectiveness of the office.

IV. Conclusion

The Commission invites public comment on the issues noted above, and on any other issues of interest related to the operation of the amendments of the PAEA. Comments shall be submitted no later than June 14, 2016.

The Commission appoints Richard A. Oliver to serve as Public Representative in this docket.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. PI2016–3 and invites public comments on the operation of the amendments of the Postal Accountability and Enhancement Act.

2. Comments are due no later than June 14, 2016.

3. Pursuant to 39 U.S.C. 505, Richard A. Oliver is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–09038 Filed 4–18–16; 8:45 am]

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[24] Postal Regulatory Commission, Report of Universal Postal Service and the Postal Monopoly, December 19, 2008 (USO Report) (*available at http://www.prc.gov/prc-reports*).

[25] *See* Postal Regulatory Commission Office of Inspector General, Semiannual Report to Congress, April 1, 2015 through September 30, 2015 (*available at http://www.prc.gov/sites/default/files/oig-reports/SARC2015-2.pdf*).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77600; File No. SR–BatsBYX–2016–04]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Certificate of Incorporation of the Exchange's Ultimate Parent Company, Bats Global Markets, Inc.

April 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the certificate of incorporation of the Exchange's ultimate parent company, Bats Global Markets, Inc. (the "Corporation").

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 16, 2015, the Corporation, the ultimate parent entity of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation (the "New Certificate of Incorporation"). The Exchange previously received Commission approval of certain substantive amendments to the certificate of incorporation of the Corporation that comprise changes included in the New Certificate of Incorporation.[5] Since that date, the Corporation has determined it to be necessary to further amend its certificate of incorporation to achieve the final, pre-IPO version of the New Certificate of Incorporation. The additional amendments will be achieved through the filing with the State of Delaware of a certificate of amendment to the New Certificate of Incorporation. The additional amendments are described in further detail below.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 77464 (March 29, 2016), 81 FR 19252 (April 1, 2016) (SR–BATS–2016–010; SR–BYX–2016–02; SR–EDGX–2016–04; SR–EDGA–2016–01).

The Exchange, on behalf of the Corporation, proposes changes to the New Certificate of Incorporation in connection with a forward stock split, pursuant to which each share of common stock of the Corporation outstanding or held in treasury immediately prior to the completion of the IPO would automatically and without action on the part of the holders thereof be subdivided into 2.91 shares of common stock (the "Stock Split").[6] Accordingly, the number of authorized shares of the Corporation, both in the aggregate and as set forth by class, as codified in paragraph (a)(i) of Article Fourth of the New Certificate of Incorporation, will be adjusted. The Corporation also plans to adjust the preferred stock of the Corporation consistent with the Stock Split. The par value of the Corporation's common stock will remain $0.01 per share.

The purpose of this rule filing is to permit the Corporation, the ultimate parent company of the Exchange, to adopt an amendment to the New Certificate of Incorporation, as described in this proposal. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and bylaws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by Bats Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation, and the governance of the Exchange will continue under its existing structure.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains, without modification, the existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is making certain administrative and structural changes to the New Certificate of Incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the ownership of the Corporation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition. As described above, the proposed rule change is simply to make certain administrative and structural changes to the New Certificate of Incorporation. These changes do not impact the governance of the Exchange nor do they modify the ownership of the Corporation.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Corporation's IPO may occur in the near future, and the changes described in this notice are a critical component of such IPO. The Exchange states that waiver of the operative delay will allow the Corporation to promptly move forward with the IPO without delay. The Commission notes that the Exchange represents that there are no changes to the provisions of the New Certificate of Incorporation that impact the ownership or governance of the Exchange, and that instead, the amendments reflect administrative and structural amendments to the New Certificate of Incorporation. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBYX–2016–04 on the subject line.

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[6] Common stock consists of voting common stock and non-voting common stock of the Corporation.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBYX–2016–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2016–04 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08938 Filed 4–18–16; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77613; File No. SR–Phlx–2016–45]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Proposed Rule Change To Modify Chapter VII Section B of the Exchange's Pricing Schedule

April 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Section B of the NASDAQ PHLX LLC Pricing Schedule ("Pricing Schedule") in Chapter VII separately to identify streaming quote interface ("SQF") Purge Ports and to set the fees applicable to SQF Purge Ports. The Exchange also is making technical, non-substantive modifications to the certain existing provisions in Chapter VII, Section B.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to modify Chapter VII, Section B of the Exchange's Pricing Schedule separately to identify SQF Purge Ports and to set the fees applicable to SQF Purge Ports. Active SQF Ports today allow purging, however the Exchange does not separately identify such ports or assess a fee for SQF Purge Ports.

The SQF Port (known as "Active SQF Port")[3] is an interface that enables Specialists,[4] Streaming Quote Traders ("SQTs")[5] and Remote Streaming Quote Traders ("RSQTs")[6] (together known as "Market Makers") to connect and send quotes into the Exchange's trading system and receive certain information.[7] Market Makers rely on data available through Active SQF Ports to provide them the necessary information for risk control and risk management so that they can perform market making activities in a swift and meaningful way. Active SQF Ports allow Market Makers to access information such as execution reports, execution report messages, auction notifications, and administrative data through a single feed. Other data that is available includes: (1) Options Auction Notifications (*e.g.,* opening imbalance, market exhaust, PIXL or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (4) Complex Order Strategy Auction Notifications (COLA); (5) Complex Order Strategy messages; (6) Option Trading Action Messages (*e.g.,* trading halts, resumption of trading); and (7) Complex Strategy Trading Action Messages (*e.g.*, trading halts, resumption of trading). In addition to Active SQF Ports being used to send quotes and to receive information needed for market making activities, Active SQF Ports now can be also used for purging quotes. Such Active SQF Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Current SQF Ports are known as "Active SQF Ports" in the Pricing Schedule to signify that such ports are fee liable when they receive inbound quotes at any time within that month ($1,250 per port per month up to a maximum of $42,000 per month).

[4] A Specialist is an Exchange member who is registered as an options specialist. *See* Phlx Rule 1020(a).

[5] An SQT is defined in Exchange Rule 1014(b)(ii)(A) as a Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[6] An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[7] *See* Securities Exchange Act Release No. 63034 (October 4, 2010), 75 FR 62441 (October 8, 2010) (SR–Phlx–2010–124).

An Active Purge Port currently can be configured as a "Purge-only" port utilized for the sole purpose of purging option interest from the Exchange's system and allowing entry of underlying-level purges for a specified range of options.[8] Such dedicated ports reduce the amount of data flowing through Active SQF Ports. A purge of options quoted on the SQF interface is reported via a "Purge Notification" message that identifies who submitted the purge and the underlying symbols.[9]

The proposed SQF Purge Ports are, similar to the Active SQF Ports, designed to assist Market Makers in the management of, and risk control over, their quotes, particularly if the Market Makers are dealing with large numbers of options. For example, if a Market Maker detects market indications that may influence the direction or bias of his quotes the Market Maker may use the proposed SQF Purge Port(s) to reduce uncertainty and to manage risk by purging all quotes in a number of options seamlessly to avoid unintended executions, while continuing to evaluate the direction of the market.

The Exchange proposes to amend Chapter VII, Section B of the Exchange's Pricing Schedule to distinguish SQF Purge Ports from Active SQF Ports and to add a new monthly SQF Purge Port fee. The Exchange is also making technical, non-substantive changes to Chapter VII, Section B to enhance clarity and readability. These changes are described in detail below.

Change 1—SQF Purge Port Fees

The Exchange proposes new subsection 4 of Chapter VII, Section B to institute an SQF Purge Port Fee. The proposed fee will be $500 per port per month for each of the first five SQF Purge Ports, and will be $100 per port per month for each port thereafter. The SQF Purge Port Fee will be applicable to all Market Makers who elect to use SQF Purge Ports on the Exchange. The structure of the proposed SQF Purge Port Fee is similar to that of the current CTI[10] Port Fee, except that the SQF Purge Port Fee is lower for the first five ports.[11] The following is an example of the proposed new SQF Purge Port Fee: A Participant that has three SQF Purge Ports would, on a monthly basis, be fee liable for $1,500 ($500 × 3). And a Participant that has seven SQF Purge Ports would, on a monthly basis, be fee liable for $2,700 ($500 × 5 and $100 × 2).

Change 2—Technical Modifications

The Exchange is also taking the opportunity to enhance the clarity and readability of Chapter VII, Section B of the Pricing Schedule. First, the Exchange is numbering each port fee in a separate subsection. Second, the Exchange is moving text from a footnote to the body of the current Active SQF Port Fee provision. Third, the Exchange is adding missing words to clarify that the current CTI Port Fee is per month. Fourth, the Exchange is deleting extraneous trademark language from the Pricing Schedule. None of these changes modifies the application of any existing fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange also believes that the proposed rule change provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, for example, the Commission indicated that market forces should generally determine pricing because national market system regulation "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[14] Likewise, in *NetCoalition* v. *Securities and Exchange Commission*[15] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[16] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[17]

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers.' . . . ."[18] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that the proposed rule change would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because offering Market Makers designated SQF Purge Ports would enhance Market Makers' ability to manage quotes, quote traffic, and their quoting obligations,[19] which would, in turn, improve their risk controls to the benefit of all market participants. The Exchange believes that the SQF Purge Ports would foster cooperation and coordination with persons engaged in facilitating transactions in securities because designating SQF Purge Ports for purges only, and making it clear in the Pricing Schedule that such ports are available,[20] may encourage better use of such dedicated ports. This may, concurrent with the Active SQF Ports that carry quote and other information necessary for market making activities, enable more efficient, as well as fair and reasonable, use of Market Makers' resources. Because SQF Purge Ports, as the name suggests, are only available for purging and not for activities such as order or quote entry, the SQF Purge Ports are not designed to permit unfair discrimination but rather are designed to enable Market Makers to manage their quoting risk and meet their heightened quoting obligations that other market participants are not subject to, which, in turn, benefits all market participants.

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[8] If a Market Maker wants to re-enter an option contract after it was purged, the Market Maker is required to specify a re-entry indicator on the first quote following a purge.

[9] For additional information regarding SQF Purge Ports, as well as SQF generally, *see http://www.nasdaqtrader.com/content/technicalsupport/specifications/TradingProducts/sqfnom2.0.pdf.* This document applies to the Exchange, to the Nasdaq Options Market, and to the BX Options Market, all of which are options exchanges of Nasdaq, Inc.

[10] CTI offers real-time clearing trade updates. A real-time clearing trade update is a message that is sent to a member after an execution has occurred and contains trade details. The message containing the trade details is also simultaneously sent to The Options Clearing Corporation.

[11] Whereas the proposed SQF Purge Port Fee is $500 per port, per month for each of the first five ports and $100 per port per month for each port thereafter, the CTI Port Fee is $650 per port, per month for the first five ports and $100 per port per month thereafter. *See* Phlx Pricing Schedule at Chapter VII, Section B.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] Securities Exchange Act Release No. 51808 at 37499 ("Regulation NMS Adopting Release" at Securities Exchange Release No. 34–51808 (June 29, 2005), 70 FR 37496 (File No. S7–10–04)).

[15] *NetCoalition* v. *Securities and Exchange Commission,* No. 09–1042 (D.C. Cir. 2010).

[16] *See id.* at 534–535.

[17] *See id.* at 537.

[18] *See id.* at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) at 73 FR at 74782–74783).

The Exchange believes that its proposal should facilitate the ability of the Exchange to recoup some costs associated with SQF Purge Ports as well as provide, maintain, and improve SQF Purge Ports. The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory for the following reasons.

Change 1—SQF Purge Port Fees

The Exchange believes that its proposal to institute a $500 per port per month fee for each of the first 5 SQF Purge Ports and $100 per port per month for each port thereafter is reasonable because it would allow the Exchange to recoup technology costs. The proposed SQF Purge Port Fee reflects the desire of the Exchange to recoup the costs of maintaining ports. The SQF Purge Port Fee is reasonable because it enables the Exchange to offset, in part, its costs associated with making such ports available, including costs based on software and hardware enhancements and resources dedicated to development, quality assurance, and support. The structure of the Exchange's SQF Purge Port Fee is similar to that of the current CTI Port Fee, except that the SQF Purge Port Fee is lower for the first five ports.[21] In addition, the SQF Purge Port Fee is in line with costs for ports at other options exchanges.[22] The SQF Purge Port Fee is also reasonable because it reflects a structure that is not novel in the options markets but rather, as a gradated fee, is similar to that of other options exchanges and competitive with what is offered by other exchanges.

Moreover, SQF Purge Ports allow Market Makers to better rely on data available through Active SQF Ports to provide them the necessary information for risk control and risk management so that they can perform market making activities in a swift and meaningful way. The Exchange believes that the progressive nature of the proposed new SQF Purge Port Fees for Market Makers is reasonable. While the proposed SQF Purge Port Fees will be assessed at $500 for the first five SQF Purge Ports, for more than five ports the fees will be assessed at only $100 per SQF Purge Port per month.[23] Market Makers on the Exchange are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants because Market Makers add value through continuous quoting[24] and the commitment of capital. Market Makers provide a critical liquidity function across thousands of individual option put and call series, a function no other market participants are obligated to perform.

The Exchange believes that establishing the proposed SQF Purge Port Fee is equitable and not unfairly discriminatory in that it will apply uniformly to all similarly situated market participants. All Market Makers that use SQF Purge Ports will be assessed the SQF Purge Port Fee in the same way. Market Makers who do not wish to acquire a dedicated SQF Purge Port can continue to use their Active SQF Port for purging their quotes without requiring a new SQF Purge Port. Having the SQF Purge Port to purge gives Market Makers choices in their preferred technical configuration with the exchange.

Change 2—Technical Modifications

The Exchange believes that the proposed technical modifications are fair and reasonable in that they do not impact the application of existing fees but simply enhance clarity and readability. Nor are the proposed technical modifications discriminatory in any respect.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to make changes to Chapter VII, Section B to add new SQF Purge Port Fees will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can and do send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because it enables the Exchange to propose offering dedicated purge ports, SQF Purge Ports, to the benefit of Market Makers.

The Exchange does not believe that the proposed rule change will impose any undue burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Moreover, in terms of intra-market competition, the Exchange notes that the proposed assessment of an SQF Purge Port Fee will be applied uniformly to all Market Makers that use such ports but should have no undue burden on any particular group of users. The proposal is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup for certain of its connectivity costs, while continuing to offer competitive rates to participants.

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[19] *See* Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

[20] As discussed, SQF Purge Ports will be fee liable on a monthly basis (and not only when such ports are active), which will help the Exchange to recoup the cost of these ports.

[21] Whereas the proposed SQF Purge Port Fee is $500 per port per month for each of the first five ports and $100 per port per month for each port thereafter, the Phlx CTI Port Fee is $650 per port per month for the first five ports and $100 per port per month thereafter. NOM and BX Options CTI Port Fees are simply $650 and $200, respectively. *See* NOM Chapter XV, Section 3(b) and BX Chapter XV, Section 3(b).

[22] *See* NOM Pricing Schedule (port fees $650 or $750 per port). *See also* C2 Options Exchange, Incorporated ("C2") (generally assesses port fees $500 to $1,000 depending on connectivity levels); and NYSE AMEX Options ("AMEX") fees (assesses a Quote Takedown Port of $450 per port per month in excess of the number of order/quote entry ports utilized.)

[23] Upon effectiveness of this proposal, a Market Maker that has three SQF Purge Ports would, on a monthly basis, be fee liable for $1,500 ($500 × 3). And a Participant that has seven SQF Purge Ports would, on a monthly basis, be fee liable for $2,700 ($500 × 5 plus $100 × 2).

[24] *See* Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

Furthermore, in this instance the proposed SQF Purge Port Fee does not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share and revenue as participants choose to abandon ports. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[25] and Rule 19b–4(f)(6) thereunder.[26] The Exchange believes the rule change qualifies for immediate effectiveness as a "non-controversial" rule change under Rule 19b–4(f)(6) of the Act.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–Phlx–2016–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–45 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08948 Filed 4–18–16; 8:45 am]

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[25] 15 U.S.C. 78s(b)(3)(a)(iii).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77606; File No. SR–BatsEDGA–2016–03]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 8.17 To Provide a Process for an Expedited Suspension Proceeding and Rule 12.15 To Prohibit Layering and Spoofing

April 13, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt a new rule to clearly prohibit disruptive quoting and trading activity on the Exchange, as further described below. Further, the Exchange proposes to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

The Exchange is filing this proposal to adopt a new rule to clearly prohibit disruptive quoting and trading activity on the Exchange and to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule. The proposal is identical to the proposal of Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. ("BZX"),[3] which was recently approved by the Commission.[4]

Background

As a national securities exchange registered pursuant to section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the Exchange's Rules.[5] Further, the Exchange's Rules are required to be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest."[6] In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is both operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority ("FINRA") pursuant to a Regulatory Services Agreement ("RSA"). When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Member or Members involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period is generally necessary and appropriate to afford the subject Member adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.

In recent years, several cases have been brought and resolved by an affiliate of the Exchange and other SROs that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering[7] or spoofing.[8] An affiliate of the Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, in accordance with Exchange Rules and the Act, the Members responsible for such conduct or responsible for their customers' conduct were allowed to continue the disruptive quoting and trading activity during the entirety of the subsequent lengthy investigation and enforcement process. The Exchange believes that it should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if a Member is engaging in or facilitating disruptive quoting and trading activity and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The following two examples are instructive on the Exchange's rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (the "Firm") and its CEO were barred from the industry for, among other things, supervisory violations related to a failure by the Firm to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.[9] The Firm's sole business was to provide trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by the Firm to U.S. markets originated directly or indirectly from foreign clients of the Firm. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and FINRA and other SROs identified clear patterns of the behavior in 2007 and 2008. Although the Firm and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, the Firm took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the Firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

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[3] The Exchange notes that the membership of the Exchange and the membership of BZX is nearly identical. BZX members and the public had the opportunity to comment—and did comment—on an identical BZX proposal to the current proposal before the Staff approved the BZX proposal. *See https://www.sec.gov/comments/sr-bats-2015-101/bats2015101.shtml.*

[4] *See* Securities Exchange Act Release No. 77171 (February 18, 2016) (SR–BATS–2015–101).

[5] 15 U.S.C. 78f(b)(1).

[6] 15 U.S.C. 78f(b)(5).

[7] "Layering" is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[8] "Spoofing" is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

[9] *See Biremis Corp. and Peter Beck,* FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (the "Firm") settled a regulatory action in connection with the Firm's provision of a trading platform, trade software and trade execution, support and clearing services for day traders.[10] Many traders using the Firm's services were located in foreign jurisdictions. The Firm ultimately settled the action with FINRA and several exchanges for a total monetary fine of $3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of $2.5 million.[11] Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, the Firm also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. The Firm was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years.

The Exchange also notes the current criminal proceedings that have commenced against Navinder Singh Sarao. Mr. Sarao's allegedly manipulative trading activity, which included forms of layering and spoofing in the futures markets, has been linked as a contributing factor to the "Flash Crash" of 2010, and yet continued through 2015.

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below.

Rule 8.17—Expedited Client Suspension Proceeding

The Exchange proposes to adopt new Rule 8.17 to set forth procedures for issuing suspension orders, immediately prohibiting a Member from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures would also provide the Exchange the authority to order a Member to cease and desist from providing access to the Exchange to a client of the Member that is conducting disruptive quoting and trading activity in violation of proposed Rule 12.15.

Under proposed paragraph (a) of Rule 8.17, with the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory Department of the Exchange (such departments generally referred to as the "Exchange" for purposes of proposed Rule 8.17) may initiate an expedited suspension proceeding with respect to alleged violations of Rule 12.15, which is proposed as part of this filing and described in detail below. Proposed paragraph (a) would also set forth the requirements for notice and service of such notice pursuant to the Rule, including the required method of service and the content of notice.

Proposed paragraph (b) of Rule 8.17 would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers. The proposed provision is consistent with existing Exchange Rule 8.6 and includes the requirement for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned. In addition to recusal initiated by such a Hearing Officer, a party to the proceeding will be permitted to file a motion to disqualify a Hearing Officer. However, due to the compressed schedule pursuant to which the process would operate under Rule 8.17, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 8.6(b), if the Hearing Panel believes the Respondent has provided satisfactory evidence in support of the motion to disqualify, the applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 8.6(a). If the Hearing Panel determines that the Respondent's grounds for disqualification are insufficient, it shall deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will proceed with the hearing.

Under paragraph (c) of the proposed Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer the hearing shall be held not later than five days after a replacement Hearing Officer is appointed. Proposed paragraph (c) would also govern how the hearing is conducted, including the authority of Hearing Officers, witnesses, additional information that may be required by the Hearing Panel, the requirement that a transcript of the proceeding be created and details related to such transcript, and details regarding the creation and maintenance of the record of the proceeding. Proposed paragraph (c) would also state that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, as proposed, if the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d) of the proposed Rule, the Hearing Panel would be authorized to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

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[10] *See Hold Brothers On-Line Investment Services, LLC*, FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

[11] *In the Matter of Hold Brothers On-Line Investment Services, LLC*, Exchange Act Release No. 67924, September 25, 2012.

Proposed paragraph (d) would also describe the content, scope and form of a suspension order. As proposed, a suspension order shall be limited to ordering a Respondent to cease and desist from violating proposed Rule 12.15, and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 12.15. Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from. Finally, the order shall include the date and hour of its issuance. As proposed, a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below. Finally, paragraph (d) would require service of the Hearing Panel's decision and any suspension order consistent with other portions of the proposed rule related to service.

Proposed paragraph (e) of Rule 8.17 would state that at any time after the Office of Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) of Rule 8.17 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Finally, proposed paragraph (f) would provide that sanctions issued under the proposed Rule 8.17 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Rule 12.15—Disruptive Quoting and Trading Activity Prohibited

The Exchange currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rule 3.1. The Exchange proposes to adopt new Rule 12.15, which would more specifically define and prohibit disruptive quoting and trading activity on the Exchange. As noted above, the Exchange also proposes to apply the proposed suspension rules to proposed Rule 12.15.

Proposed Rule 12.15 would prohibit Members from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Interpretation and Policies .01 and .02 of the Rule, including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers.

To provide proper context for the situations in which the Exchange proposes to utilize its proposed authority, the Exchange believes it is necessary to describe the types of disruptive quoting and trading activity that would cause the Exchange to use its authority. Accordingly, the Exchange proposes to adopt Interpretation and Policy .01 and .02, providing additional details regarding disruptive quoting and trading activity. Proposed Interpretation and Policy .01(a), which describes disruptive quoting and trading activity containing many of the elements indicative of layering, would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (a) A party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and (b) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and (c) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and (d) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders. Proposed Interpretation and Policy .01(b), which describes disruptive quoting and trading activity containing many of the elements indicative of spoofing, would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (a) A party narrows the spread for a security by placing an order inside the national best bid or offer; and (b) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in (a) that narrowed the spread. The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above. The Exchange further believes that the proposed descriptions will provide Members with clear descriptions of disruptive quoting and trading activity that will help them to avoid engaging in such activities or allowing their clients to engage in such activities.

The Exchange proposes to make clear in Interpretation and Policy .02 that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the rule to apply. For instance, with respect to the pattern defined in proposed Interpretation and Policy .01(a) it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders. The Exchange also proposes to make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues.

In sum, proposed Rule 12.15 coupled with proposed Rule 8.17 would provide the Exchange with authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange. Below is an example of how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive quoting and trading activity. After an initial investigation the Exchange would then contact the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the Member that would include details regarding the alleged violations as well as the proposed sanction. In such a case the proposed sanction would likely be to order the Member to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such Member unless and until such action is taken. The Member would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding. If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the Member to cease providing access to the client at issue and suspending such Member unless and until such action is taken. If such Member wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such Member could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the Member pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.[12]

The Exchange reiterates that it already has broad authority to take action against a Member in the event that such Member is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent cases like the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have the authority to promptly initiate expedited suspension proceedings against any Member who has demonstrated a clear pattern or practice of disruptive quoting and trading activity, as described above, and to take action including ordering such Member to terminate access to the Exchange to one or more of such Member's clients if such clients are responsible for the activity. The Exchange recognizes that its proposed authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the proposed rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the Exchange believes that it would use this authority in limited circumstances, when necessary to protect investors, other Members and the Exchange. Further, the Exchange believes that the proposed expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive quoting and trading activity.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with section 6(b) of the Act[13] and further the objectives of section 6(b)(5) of the Act[14] because they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of Rule 12.15 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with sections 6(b)(1) and 6(b)(6) of the Act,[15] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other Members and their customers as well as the Exchange if conduct is allowed to continue on the Exchange. As explained above, the Exchange notes that it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing[16] to eliminate an express intent element that would not be proven on an expedited basis and would instead require a thorough investigation into the activity. As noted throughout this filing, the Exchange believes it is necessary for the protection of investors to make such modifications in order to adopt an expedited process rather than allowing disruptive quoting and trading activity to occur for several years. Through this proposal, the Exchange does not intend to modify the definitions of spoofing and layering that have generally been used by the Exchange and other regulators in connection with actions like those cited above.

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[12] The proposal will not supplant the Exchange's current investigative and enforcement process. Currently, when Exchange surveillance staff identifies a pattern of potentially disruptive quoting and trading activity, the staff conducts an initial analysis and investigation of that activity. After the initial investigation, the Exchange then contacts the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. The Exchange will continue this practice after this proposal becomes operative. The Exchange will only seek an expedited suspension when—after multiple requests to a Member for an explanation of activity—it continues to see the same pattern of manipulation from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

The Exchange further believes that the proposal is consistent with section 6(b)(7) of the Act,[17] which requires that the rules of an exchange "provide a fair procedure for the disciplining of members and persons associated with persons . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof." Finally, the Exchange also believes the proposal is consistent with sections 6(d)(1) and 6(d)(2) of the Act,[18] which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: Provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within proposed Rule 8.17. Importantly, as noted above, the Exchange anticipates using the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other Members and the Exchange, and even in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on their market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other Members and the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange asserts that the waiver of the 30-day operative delay will allow the Exchange to immediately enforce the proposed rules to protect its members and market participants from the behavior proscribed by the proposed rules. The Exchange further states that waiver of the operative delay is consistent with the protection of investors and the public interest because it is designed to protect investors and the public from disruptive quoting and trading activity. Furthermore, the Commission notes that it recently approved an identical expedited disciplinary procedure for an affiliate of the Exchange, BatsBZX,[25] and the Exchange represents above that the membership of the Exchange and the membership of BatsBZX is nearly identical.[26] Based on the foregoing, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsEDGA–2016–03 on the subject line.

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[16] *See supra,* notes 7 and 8.

[17] 15 U.S.C. 78f(b)(7).

[18] 15 U.S.C. 78f(d)(1).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See supra,* note 4.

[26] *See supra,* note 3.

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGA–2016–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2016–03, and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08943 Filed 4–18–16; 8:45 am]

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[28] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77607; File No. SR–BYX–2016–03]

Self-Regulatory Organizations; BATS–Y Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt an Early Trading Session and Three New Time-In-Force Instructions

April 13, 2016.

I. Introduction

On February 16, 2016, BATS–Y Exchange, Inc. (n/k/a Bats BYX Exchange, Inc.) (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend its rules to: (i) Create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new Time-in-Force ("TIF") instructions. The proposed rule change was published for comment in the **Federal Register** on February 29, 2016.[4] On April 11, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend its rules to: (i) Create a new trading session, the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new TIF instructions.

A. Early Trading Session

The Exchange trading day is currently divided into three sessions: (i) The Pre-Opening Session, which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; (ii) Regular Trading Hours, which run from 9:30 a.m. to 4:00 p.m. Eastern Time; and (iii) the After Hours Session, which runs from 4:00 p.m. to 5:00 p.m. Eastern Time.[6] The Exchange proposes to amend its rules to create the Early Trading Session. Exchange Rule 1.5 would be amended to add a new term, "Early Trading Session," under proposed paragraph (ee). "Early Trading Session" would be defined as "the time between 7:00 a.m. and 8:00 a.m. Eastern Time."

The Exchange also proposes to amend Exchange Rule 11.1(a) to state that orders may be entered or executed on, or routed away from, the Exchange during the Early Trading Session and to reflect the start time of the Early Trading Session as 7:00 a.m. Eastern Time. Other than the proposal to adopt an Early Trading Session, the Exchange does not propose to amend the substance or operation of Exchange Rule 11.1(a).[7]

Users[8] currently designate when their orders are eligible for execution by selecting a desired TIF instruction. Orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session or Regular Trading Hours, depending on the TIF selected by the User. A User may enter orders in advance of the trading session for which its orders are eligible. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only ("RHO"), which designates that the order only be eligible for execution during Regular Trading Hours.[9] Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. According to the Exchange, some Users have requested the ability for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Therefore, the Exchange is proposing to adopt the Early Trading Session.[10]

As amended, Exchange Rule 11.1(a) would state that orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 77213 (February 23, 2016), 81 FR 10310 ("Notice").

[5] Amendment No. 1 amended and replaced the proposed rule change in its entirety. In Amendment No. 1, the Exchange made technical, non-substantive changes to the proposed rule text to replace references to "BATS" with "BYX," and otherwise revised Exhibit 5, so that the proposed rule text therein is consistent with the Exchange's current rule text. *See* Securities Exchange Act Release No. 77308 (March 7, 2016) 81 FR 12975 (March 11, 2016) (SR–BYX–2016–07). In Amendment No. 1, the Exchange also proposes a non-substantive change to Exchange Rule 14.1 to correct an inaccurate description of the start time for the Pre-Opening Session. Because Amendment No. 1 adds clarification and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[6] *See* Notice, *supra* note 4, at 10310.

[7] *See id.*

[8] "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." *See* Exchange Rule 1.5(cc).

[9] *See* Exchange Rule 11.9(b)(7).

[10] *See* Notice, *supra* note 4, at 10310.

Eastern Time, would not be eligible for execution until the start of the Early Trading Session, Pre-Opening Session, or Regular Trading Hours, depending on the TIF selected by the User. Exchange Rule 11.1(a) would also be amended to state that the Exchange would not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: (i) BYX Post Only Orders;[11] (ii) Partial Post Only at Limit Orders;[12] (iii) Intermarket Sweep Orders ("ISOs");[13] (iv) BYX Market Orders[14] with a TIF other than RHO; (v) Minimum Quantity Orders[15] that also include a TIF of RHO; (vi) Retail Price Improvement Orders;[16] and (vii) all orders with a TIF instruction of Immediate-or-Cancel ("IOC")[17] or Fill-or-Kill ("FOK").[18] At the commencement of the Early Trading Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would be handled in time sequence, beginning with the order with the oldest time stamp, and would be placed on the BYX Book,[19] routed, cancelled, or executed in accordance with the terms of the order. As amended, Exchange Rule 11.1(a) would state that orders may be executed on the Exchange or routed away from the Exchange during Regular Trading Hours and during the Early Trading, Pre-Opening, and After Hours Trading Sessions.[20]

The Exchange also proposes to make the changes described below to Exchange Rules 3.21, 11.9, 11.13, 11.17, and 14.1 to reflect the adoption of the Early Trading Session:

- Exchange Rule 3.21, Customer Disclosures. Exchange Rule 3.21 prohibits Members from accepting an order from a customer for execution in the Pre-Opening or After Hours Trading Session without disclosing to their customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The Exchange proposes to amend Exchange Rule 3.21 to also require such disclosures for customer orders that are to be executed during the Early Trading Session.[21]
- Exchange Rule 11.9, Orders and Modifiers. The Exchange proposes to amend the description of BYX Market Orders under Exchange Rule 11.9(a)(2), Market Maker Peg Orders under Rule 11.9(c)(16), and Supplementary Peg Orders under Rule 11.9(c)(19) to account for the Early Trading Session. Every order type that is currently available beginning at 8:00 a.m. would be available beginning at 7:00 a.m. for inclusion in the Early Trading Session. All other order types, and all order type behaviors, would otherwise remain unchanged. Therefore, each of the above rules for BYX Market Orders, Market Maker Peg Orders, and Supplemental Peg Orders would be amended to account for the Early Trading Session.[22]
- Exchange Rule 11.13, Order Execution and Routing. Exchange Rule 11.13(a)(2)(B) discusses compliance with Regulation NMS and Trade Through Protections and states that the price of any execution occurring during the Pre-Opening Session or the After Hours Trading Session must be equal to or better than the highest Protected Bid or lowest Protected Offer, unless the order is marked ISO or a Protected Bid is crossing a Protected Offer. The Exchange proposes to amend Exchange Rule 11.13(a)(2)(B) to expand the Exchange Rule's requirements to the Early Trading Session.[23]
- Exchange Rule 11.17, Clearly Erroneous Executions. Exchange Rule 11.17 outlines under which conditions the Exchange may determine that an execution is clearly erroneous. The Exchange proposes to amend Exchange Rule 11.17 to include executions that occur during the Early Trading Session. Exchange Rule 11.17(c)(1) sets forth the numerical guidelines the Exchange is to follow when determining whether an execution was clearly erroneous during Regular Trading Hours or the Pre-Opening or After Hours Trading Session. Exchange Rule 11.17(c)(3) sets forth additional factors the Exchange may consider in determining whether a transaction is clearly erroneous. These factors include whether the transaction was executed during the Pre-Opening or After Hours Trading Sessions. The Exchange proposes to amend Exchange Rule 11.17(c)(1) and (3) to include executions occurring during the Early Trading Session.[24]
- Rule 14.1, Unlisted Trading Privileges. The Exchange proposes to amend Rules 14.1(c)(2), and Interpretation and Policies .01(a) and (b) to account for the proposed Early Trading Session. Specifically, the Exchange proposes to amend paragraph (c)(2) to state that an information circular distributed by the Exchange prior to the commencement of trading of a UTP Derivative Security will include the risk of trading during the Early Trading Session, in addition to the Pre-Opening Session and After Hours Trading Session.[25] In addition, the Exchange proposes to amend Interpretation and Policies .01(a) to add Early Trading Session to the paragraph's title and to state that if a UTP Derivative Security begins trading on the Exchange in the Early Trading Session or Pre-Opening Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of the Intraday Indicative Value ("IIV") or the value of the underlying index, as applicable, to such UTP Derivative Security, by a major market data vendor, the Exchange may continue to trade the UTP Derivative Security for the remainder of the Early Trading Session and Pre-Opening Session. Lastly, the Exchange proposes to amend Interpretation and Policies .01(b) to add Early Trading Session to the paragraph's title and to amend subparagraph (ii) of that section to state that if the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Early Trading Session or Pre-Opening Session on the next business day, the Exchange shall not commence trading of the UTP Derivative Security in the Early Trading Session or Pre-Opening Session that day.[26]

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[11] *See* Exchange Rule 11.9(c)(6).

[12] *See* Exchange Rule 11.9(c)(7).

[13] *See* Exchange Rule 11.9(d).

[14] *See* Exchange Rule 11.9(a)(2).

[15] *See* Exchange Rule 11.9(c)(5).

[16] *See* Exchange Rule 11.24(a)(3).

[17] *See* Exchange Rule 11.9(b)(1).

[18] *See* Exchange Rule 11.9(b)(6).

[19] *See* Exchange Rule 1.5(e).

[20] *See* Notice, *supra* note 4, at 10310–11. Amendment No. 1 updated Exhibit 5 so that the names of orders, order modifiers, and the Exchange's book stated therein conform with those used in the current Exchange Rules. *See supra,* note 5. The Exchange also describes how the Early Trading Session will affect its Members' operations and the Exchange's opening process, order types, routing services, order processing, data feeds, trade reporting, market surveillance, and clearly erroneous trade processing. The Exchange clarifies that these processes would operate in the same manner with the exception of changes in time to reflect the adoption of the Early Trading Session. *See* Notice, *supra* note 4, at 10311.

[21] *See id.*

[22] *See id.* at 10311–12. Amendment No. 1 updated Exhibit 5 so that the names of orders and order modifiers stated therein conform with those used in the current Exchange Rules. *See supra,* note 5.

[23] *See* Notice, *supra* note 4, at 10312.

[24] *See id.* The Exchange also proposes technical amendments to Exchange Rules 11.17(c)(1) and (3) to delete the letter "s" from the word "Trading Sessions" and the letter "s" from the word "tapes," respectively.

[25] In Amendment No. 1, the Exchange also proposes to amend Rule 14.1(c)(2) to correct an inaccurate description of the Pre-Opening Session, which currently reads as 9:00 a.m. to 9:30 a.m. rather than 8:00 a.m. to 9:30 a.m. as is set forth throughout Exchange Rules.

[26] *See* Notice, *supra* note 4, at 10312.

B. TIF Instructions

The Exchange proposes to adopt three new TIF instructions under Exchange Rule 11.9(b). As discussed above, a User may designate when its order is eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b).[27]

Although the Exchange states that the proposal to adopt an Early Trading Session is in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time, the Exchange states that some Users have requested that their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposes to adopt the following three new TIF instructions under Exchange Rule 11.9(b):[28]

- Pre-Opening Session Plus ("PRE"). A limit order that is designated for execution during the Pre-Opening Session and Regular Trading Hours. Like the current Good 'til Cancel TIF instruction,[29] any portion not executed would expire at the end of Regular Trading Hours.
- Pre-Opening Session 'til Extended Day ("PTX"). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good 'til Extended Day TIF instruction,[30] any portion not executed would expire at the end of the After Hours Session.
- Pre-Opening Session 'til Day ("PTD"). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good 'til Day TIF instruction,[31] any portion not executed would be cancelled at the expiration time assigned to the order, which can be no later than the close of the After Hours Trading Session.

Under each proposed TIF instruction, Users may designate that their orders only be eligible for execution starting with the Pre-Opening Session. Users may continue to enter orders as early as 6:00 a.m., but orders with the proposed TIF instructions would not be eligible for execution until 8:00 a.m. Eastern Time, which is the start of the Pre-Opening Session. At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time with one of the proposed TIF instructions would be handled in time sequence, beginning with the order with the oldest time stamp, and would be placed on the BYX Book, routed, cancelled, or executed in accordance with the terms of the order.[32]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[33] The Commission believes that the proposed rule change is consistent with Section 6(b)(5)[34] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange proposes to adopt an Early Trading Session and three new TIF instructions and to make related changes to its rules as discussed above.[35] The Commission believes that the proposed rules would provide Users with additional options for trading on the Exchange. The Commission notes that the proposed Early Trading Session hours are similar to those of other exchanges,[36] and that the proposed TIF instructions would offer functionality similar to existing functionality available on the Exchange and other exchanges that allows Members to select when their orders become eligible for execution.[37]

The Commission notes that the Exchange has represented that it would subject orders that are eligible for execution as of the start of the Pre-Opening Session to all of the Exchange's standard regulatory checks, as it currently does with all orders upon entry.[38] Specifically, the Exchange would subject such orders to checks for compliance with, including but not limited to, Regulation NMS,[39] Regulation SHO,[40] and relevant Exchange rules.[41] Moreover, the Exchange reminds its Members of their regulatory obligations when submitting an order with one of the proposed TIF instructions.[42] In particular, the Exchange states that Members must comply with the Market Access Rule,[43] which requires, among other things, pre-trade controls and procedures that are reasonably designed to assure compliance with Exchange trading rules and Commission rules pursuant to Regulation SHO and Regulation NMS. The Exchange also notes that a Member's procedures must be reasonably designed to ensure compliance with the applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.[44]

The Commission further notes the Exchange's discussion of the best execution obligations of Members utilizing the proposed TIF instructions.[45] Specifically, the Exchange states that a Member's best execution obligations may include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers when the execution of their order may be delayed intentionally while the Member utilizes reasonable diligence to ascertain the best market for the security.[46] The Exchange further notes that Members will maintain the ability to cancel or modify the terms of an order utilizing any of the proposed TIF instructions at any time, including during the time from when the order is routed to the Exchange until the start of the Pre-Opening Session.[47] As a result, the Exchange states that a Member who utilizes the proposed TIF instructions, but later determines that market conditions favor execution during Early Trading Session, can cancel the order residing at the Exchange and enter a separate order to execute during the Early Trading Session.[48]

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[27] *See* Exchange Rule 11.1(a).

[28] *See* Notice, *supra* note 4, at 10312.

[29] *See* Exchange Rule 11.9(b)(3).

[30] *See* Exchange Rule 11.9(b)(5).

[31] *See* Exchange Rule 11.9(b)(4).

[32] *See* Notice, *supra* note 4, at 10312. Amendment No. 1 updated Exhibit 5 so that the name of the Exchange's book stated therein conforms with the name used in the current Exchange Rules. *See supra,* note 5. Orders utilizing one of the proposed TIF instructions would not be eligible for execution during the Early Trading Session. *See* Notice, *supra* note 4, at 10312, n.32.

[33] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] *See supra* section II.

[36] For example, NYSE Arca, Inc. operates an Opening Session that starts at 4:00 a.m. Eastern Time and ends at 9:30 a.m. Eastern Time, and Nasdaq Stock Market LLC operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. *See* NYSE Arca Rule 7.34(a)(1); Nasdaq Rule 4701(g). *See also* Securities Exchange Act Release No. 60605 (September 1, 2009), 74 FR 46277 (September 8, 2009) (SR–CHX–2009–13) (adopting bifurcated post-trading session on the Chicago Stock Exchange, Inc.).

[37] Specifically, on the Exchange, Users may enter an order starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours, which begin at 9:30 a.m. Eastern Time. *See* Exchange Rule 11.9(b)(7); *see also* NASDAQ Rule 4703(a)(7).

[38] *See* Notice, *supra* note 4, at 10314.

[39] *See* 17 CFR 242.600–613.

[40] *See* 17 CFR 242.200–204.

[41] *See* Notice, *supra* note 4, at 10314.

[42] *See id.*

[43] *See* 17 CFR 240.15c3–5.

[44] *See* Notice, *supra* note 4, at 10314.

[45] *See id.* at 10314.

[46] *See id.* at n.41.

[47] *See id.* at 10313.

Furthermore, the Exchange proposes technical amendments to its Rules to correct erroneous plural words and an inaccurate description of the Pre-Opening Session times in Exchange Rules 11.17 and 14.1, respectively. The Commission believes these proposed amendments would help alleviate potential confusion among Users and Members regarding the operation of the Exchange's rules and are, therefore, consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[49] that the proposed rule change (SR–BYX–2016–03), as modified by Amendment No.1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08955 Filed 4–18–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77611; File No. SR–BATS–2016–14]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt an Early Trading Session and Three New Time-in-Force Instructions

April 13, 2016.

I. Introduction

On February 12, 2016, BATS Exchange, Inc. (the "Exchange" or "BATS") (n/k/a Bats BZX Exchange, Inc.) filed with the Securities and Exchange Commission (the "Commission"), pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend its rules to: (i) Create a new trading session to be known as the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new Time-in-Force ("TIF") instructions. The proposed rule change was published for comment in the **Federal Register** on February 29, 2016.[4] On April 11, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to amend its rules to: (i) Create a new trading session, the Early Trading Session, which will run from 7:00 a.m. to 8:00 a.m. Eastern Time; and (ii) adopt three new TIF instructions.

A. Early Trading Session

The Exchange trading day is currently divided into three sessions: (i) The Pre-Opening Session, which starts at 8:00 a.m. and ends at 9:30 a.m. Eastern Time; (ii) Regular Trading Hours, which run from 9:30 a.m. to 4:00 p.m. Eastern Time; and (iii) the After Hours Session, which runs from 4:00 p.m. to 5:00 p.m. Eastern Time.[6] The Exchange proposes to amend its rules to create the Early Trading Session. Exchange Rule 1.5 would be amended to add a new term, "Early Trading Session," under proposed paragraph (ee). "Early Trading Session" would be defined as "the time between 7:00 a.m. and 8:00 a.m. Eastern Time."

The Exchange also proposes to amend Exchange Rule 11.1(a) to state that orders may be entered or executed on, or routed away from, the Exchange during the Early Trading Session and to reflect the start time of the Early Trading Session as 7:00 a.m. Eastern Time. Other than the proposal to adopt an Early Trading Session, the Exchange does not propose to amend the substance or operation of Exchange Rule 11.1(a).[7]

Users[8] currently designate when their orders are eligible for execution by selecting a desired TIF instruction. Orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time are not eligible for execution until the start of the Pre-Opening Session or Regular Trading Hours, depending on the TIF selected by the User. A User may enter orders in advance of the trading session for which its orders are eligible. For example, Users may enter orders starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only ("RHO"), which designates that the order only be eligible for execution during Regular Trading Hours.[9] Users may enter orders as early as 6:00 a.m. Eastern Time, but those orders would not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. According to the Exchange, some Users have requested the ability for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time. Therefore, the Exchange is proposing to adopt the Early Trading Session.[10]

As amended, Exchange Rule 11.1(a) would state that orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would not be eligible for execution until the start of the Early Trading Session, Pre-Opening Session, or Regular Trading Hours, depending on the TIF selected by the User. Exchange Rule 11.1(a) would also be amended to state that the Exchange would not accept the following orders prior to 7:00 a.m. Eastern Time, rather than 8:00 a.m.: (i) BZX Post Only Orders;[11] (ii) Partial Post Only at Limit Orders;[12] (iii) Intermarket Sweep Orders ("ISOs");[13] (iv) BZX Market Orders[14] that are not Eligible Auction Orders as defined in Rule 11.23(a)(8); (v) Minimum Quantity Orders[15] that also include a TIF of RHO; and (vi) all orders with a TIF instruction of Immediate-or-Cancel ("IOC")[16] or Fill-or-Kill ("FOK").[17] At the commencement of the Early Trading Session, orders entered between 6:00 a.m. and 7:00 a.m. Eastern Time, rather than 6:00 a.m. and 8:00 a.m. Eastern Time, would be handled in time sequence, beginning with the order with the oldest time stamp, and would be placed on the BZX Book,[18] routed, cancelled, or executed in accordance with the terms of the order.[19] As amended, Exchange Rule 11.1(a) would state that orders may be executed on the Exchange or routed away from the Exchange during Regular Trading Hours and during the Early Trading, Pre-Opening, and After Hours Trading Sessions.[20]

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[48] *See id.* at 10313–14.

[49] 15 U.S.C. 78s(b)(2).

[50] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 77214 (February 23, 2016), 81 FR 10350 ("Notice").

[5] Amendment No. 1 amended and replaced the proposed rule change in its entirety. In Amendment No. 1, the Exchange made technical nonsubstantive changes to the proposed rule text to replace all references to "BATS" with "BZX" and to otherwise revise Exhibit 5 so that the proposed rule text is consistent with the Exchange's current rule text. *See* Securities Exchange Act Release Nos. 77307 (March 7, 2016), 81 FR 12996 (March 11, 2016) (SR–BATS–2016–25) and 77476 (March 30, 2016) 81 FR 19661 (April 5, 2016) (SR–BATS–2016–17). Because Amendment No. 1 adds clarification and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[6] *See* Notice, *supra* note 4, at 10350.

[7] *See id.*

[8] "User" is defined as "any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." *See* Exchange Rule 1.5(cc).

[9] *See* Exchange Rule 11.9(b)(7).

[10] *See* Notice, *supra* note 4, at 10351.

[11] *See* Exchange Rule 11.9(c)(6).

[12] *See* Exchange Rule 11.9(c)(7).

[13] *See* Exchange Rule 11.9(d).

[14] *See* Exchange Rule 11.9(a)(2).

[15] *See* Exchange Rule 11.9(c)(5).

[16] *See* Exchange Rule 11.9(b)(1).

[17] *See* Exchange Rule 11.9(b)(6).

The Exchange also proposes to make the changes described below to Exchange Rules 3.21, 11.9, 11.13, 11.17, 11.23, 14.6, 14.11 and 14.12 to reflect the adoption of the Early Trading Session:

- Exchange Rule 3.21, Customer Disclosures. Exchange Rule 3.21 prohibits Members from accepting an order from a customer for execution in the Pre-Opening or After Hours Trading Session without disclosing to their customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The Exchange proposes to amend Exchange Rule 3.21 to also require such disclosures for customer orders that are to be executed during the Early Trading Session.[21]
- Exchange Rule 11.9, Orders and Modifiers. The Exchange proposes to amend the description of BZX Market Orders under Exchange Rule 11.9(a)(2), Market Maker Peg Orders under Rule 11.9(c)(16), and Supplementary Peg Orders under Rule 11.9(c)(19) to account for the Early Trading Session. Every order type that is currently available beginning at 8:00 a.m. would be available beginning at 7:00 a.m. for inclusion in the Early Trading Session. All other order types, and all order type behaviors, would otherwise remain unchanged. Therefore, each of the above rules for BZX Market Orders, Market Maker Peg Orders, and Supplemental Peg Orders would be amended to account for the Early Trading Session.[22]
- Exchange Rule 11.13, Order Execution and Routing. Exchange Rule 11.13(a)(2)(B) discusses compliance with Regulation NMS and Trade Through Protections and states that the price of any execution occurring during the Pre-Opening Session or the After Hours Trading Session must be equal to or better than the highest Protected Bid or lowest Protected Offer, unless the order is marked ISO or a Protected Bid is crossing a Protected Offer. The Exchange proposes to amend Exchange Rule 11.13(a)(2)(B) to expand the Exchange Rule's requirements to the Early Trading Session.[23]
- Exchange Rule 11.17, Clearly Erroneous Executions. Exchange Rule 11.17 outlines under which conditions the Exchange may determine that an execution is clearly erroneous. The Exchange proposes to amend Exchange Rule 11.17 to include executions that occur during the Early Trading Session. Exchange Rule 11.17(c)(1) sets forth the numerical guidelines the Exchange is to follow when determining whether an execution was clearly erroneous during Regular Trading Hours or the Pre-Opening or After Hours Trading Session. Exchange Rule 11.17(c)(3) sets forth additional factors the Exchange may consider in determining whether a transaction is clearly erroneous. These factors include whether the transaction was executed during the Pre-Opening or After Hours Trading Sessions. The Exchange proposes to amend Exchange Rule 11.17(c)(1) and (3) to include executions occurring during the Early Trading Session.[24]
- Exchange Rule 11.23, Auction. Exchange Rules 11.23(b) and (c) describe the Exchange's Opening and Closing Auction processes. The Exchange proposes to amend Exchange Rules 11.23(b)(1)(C) to reflect that Orders eligible for execution in the Early Trading Session or Pre-Opening Session may be cancelled or modified at any time prior to execution.[25]
- Rule 14.6, Obligations for Companies Listed on the Exchange. The Exchange proposes to amend Exchange Rules 14.6(b)(1), (b)(2), and Interpretation and Policies .01(a), (b), (c), and .02 to require an Exchange-Listed Company that publicly releases material information outside of the Exchange market hours to inform the Exchange's Surveillance Department of that material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. The Exchange proposes to amend Exchange Rule 14.6, Interpretation and Policies .01(a), (b), (c), and .02 to reflect the start of the Early Trading Session at 7:00 a.m. Eastern Time. The amended provisions of Exchange Rule 14.6, Interpretation and Policies .01(a), (b), (c), and .02 require companies to notify the Exchange's Surveillance Department of the release of certain material information at least ten minutes prior to the release of such information to the public when the public release of the information is made during Exchange market hours.[26]
- Rule 14.11, Other Securities. The Exchange proposes to amend Exchange Rules 14.11(b)(7) and (c)(7) to reflect the extension of the pre-Opening session of the Exchange to 7:00 a.m. Eastern Time for the trading of Portfolio Depository Receipts and Index Fund Shares, respectively. The Exchange also proposes to amend the provisions of Exchange Rules 14.11(d) and (e) that address the trading of the following securities to include references to the Early Trading Session or to state that transaction in the following products may occur during the Early Trading Session, in addition to during Regular Trading Hours and the Pre-Opening and After Hours Trading Sessions: (i) Securities Linked to the Performance of Indexes and Commodities (Including Currencies) (Exchange Rule 14.11(d)); (ii) Commodity-Based Trust Shares (Exchange Rule 14.11(e)(4)); (iii) Currency Trust Shares (Exchange Rule 14.11(e)(5)); (iv) Commodity Index Trust Shares (Exchange Rule 14.11(e)(6)); (v) Commodity Futures Trust Shares (Exchange Rule 14.11(e)(7)); (vi) Trust Units (Exchange Rule 14.11(e)(9)); (vii) Managed Trust Securities (Exchange Rule 14.11(e)(10)); and (viii) Derivative Securities Traded under Unlisted

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[18] *See* Exchange Rule 1.5(e).

[19] *See* Notice, *supra* note 4, at 10351.

[20] *See id.* Amendment No. 1 updated Exhibit 5 so that the names of orders, order modifiers, and the Exchange's book stated therein conform with those used in the current Exchange Rules. *See supra,* note 5. The Exchange also describes how the Early Trading Session will affect its Members' operations and the Exchange's opening process, order types, routing services, order processing, data feeds, trade reporting, market surveillance, and clearly erroneous trade processing. The Exchange clarifies that these processes would operate in the same manner with the exception of changes in time to reflect the adoption of the Early Trading Session. *See* Notice, *supra* note 4, at 10351.

[21] *See id.*

[22] *See id.* at 10351–52. Amendment No. 1 updated Exhibit 5 so that the names of orders and order modifiers stated therein conform with those used in the current Exchange Rules. *See supra,* note 5.

[23] *See* Notice, *supra* note 4, at 10352.

[24] *See id.* The Exchange also proposes technical amendments to Exchange Rules 11.17(c)(1) and (3) to delete the letter "s" from the word "Trading Sessions" and the letter "s" from the word "tapes," respectively.

[25] The Commission notes that in the initial filing for this proposed rule change, the Exchange proposed additional conforming changes to Exchange Rules 11.23(b)(1)(A) and (c)(1)(A) to state that Users may submit orders at the start of the Early Trading Session at 7:00 a.m., rather than 8:00 a.m., to participate in either the Opening or Closing Auction. In Amendment No. 1, those proposed amendments were removed from the proposal because the current rule text for each rule no longer requires changes to conform with this proposal due to recent amendments in a separate rule filing. *See* Securities Exchange Act Release No. 77476 (March 30, 2016) 81 FR 19661 (April 5, 2016) (SR–BATS–2016–17).

[26] *See* Notice, *supra* note 4, at 10352.

Trading Privileges (Exchange Rule 14.11(j)).[27]

- Rule 14.12, Failure to Meet Listing Standards. The Exchange proposes to amend Exchange Rules 14.12(e) and (m)(11) to require that companies that publicly announce the receipt of a notification of deficiency, Staff Delisting Determination, Public Reprimand Letter, or Adjudicatory Body Decision that serves as a Public Reprimand Letter outside of Exchange market hours inform the Exchange's Surveillance Department of the material information prior to 6:50 a.m. rather than 7:50 a.m. Eastern Time. If the public announcement is made during Exchange market hours, both Exchange Rules would continue to require that the company inform the Exchange's Surveillance Department at least 10 minutes prior to the announcement.[28]

B. TIF Instructions

The Exchange proposes to adopt three new TIF instructions under Exchange Rule 11.9(b). As discussed above, a User may designate when its order is eligible for execution by selecting the desired TIF instruction under Exchange Rule 11.9(b).[29]

Although the Exchange states that the proposal to adopt an Early Trading Session is in response to User requests for their orders to be eligible for execution starting at 7:00 a.m. Eastern Time, the Exchange states that some Users have requested that their orders continue to not be eligible for execution until the start of the Pre-Opening Session at 8:00 a.m. Therefore, the Exchange proposes to adopt the following three new TIF instructions under Exchange Rule 11.9(b): [30]

- Pre-Opening Session Plus ("PRE"). A limit order that is designated for execution during the Pre-Opening Session and Regular Trading Hours. Like the current Good 'til Cancel TIF instruction,[31] any portion not executed would expire at the end of Regular Trading Hours.
- Pre-Opening Session 'til Extended Day ("PTX"). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good 'til Extended Day TIF instruction,[32] any portion not executed would expire at the end of the After Hours Session.
- Pre-Opening Session 'til Day ("PTD"). A limit order that is designated for execution during the Pre-Opening Session, Regular Trading Hours, and the After Hours Session. Like the current Good 'til Day TIF instruction,[33] any portion not executed would be cancelled at the expiration time assigned to the order, which can be no later than the close of the After Hours Trading Session.

Under each proposed TIF instruction, Users may designate that their orders only be eligible for execution starting with the Pre-Opening Session. Users may continue to enter orders as early as 6:00 a.m., but orders with the proposed TIF instructions would not be eligible for execution until 8:00 a.m. Eastern Time, which is the start of the Pre-Opening Session. At the commencement of the Pre-Opening Session, orders entered between 6:00 a.m. and 8:00 a.m. Eastern Time with one of the proposed TIF instructions would be handled in time sequence, beginning with the order with the oldest time stamp, and would be placed on the BZX Book, routed, cancelled, or executed in accordance with the terms of the order.[34]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change, as modified by Amendment No.1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[35] The Commission believes that the proposed rule change is consistent with section 6(b)(5) [36] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange proposes to adopt an Early Trading Session and three new TIF instructions and to make related changes to its rules as discussed above.[37] The Commission believes that the proposed rules would provide Users with additional options for trading on the Exchange. The Commission notes that the proposed Early Trading Session hours are similar to those of other exchanges,[38] and that the proposed TIF instructions would offer functionality similar to existing functionality available on the Exchange and other exchanges that allows Members to select when their orders become eligible for execution.[39]

The Commission notes that the Exchange has represented that it would subject orders that are eligible for execution as of the start of the Pre-Opening Session to all of the Exchange's standard regulatory checks, as it currently does with all orders upon entry.[40] Specifically, the Exchange would subject such orders to checks for compliance with, including but not limited to, Regulation NMS,[41] Regulation SHO,[42] and relevant Exchange rules.[43] Moreover, the Exchange reminds its Members of their regulatory obligations when submitting an order with one of the proposed TIF instructions.[44] In particular, the Exchange states that Members must comply with the Market Access Rule,[45] which requires, among other things, pre-trade controls and procedures that are reasonably designed to assure compliance with Exchange trading rules and Commission rules pursuant to Regulation SHO and Regulation NMS. The Exchange also notes that a Member's procedures must be reasonably designed to ensure compliance with the applicable regulatory requirements, not just at the time the order is routed to the Exchange, but also at the time the order becomes eligible for execution.[46]

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[27] *See id.* at 10352–53. The Exchange also proposes to amend Rule 14.11(j)(2) to correct an inaccurate description of the Pre-Opening Session, which currently reads as 9:00 a.m. to 9:30 a.m. rather than 8:00 a.m. to 9:30 a.m. as is set forth throughout Exchange Rules. *See id.* at 10353

[28] *See id.*

[29] *See* Exchange Rule 11.1(a).

[30] *See* Notice, *supra* note 4, at 10353.

[31] *See* Exchange Rule 11.9(b)(3).

[32] *See* Exchange Rule 11.9(b)(5).

[33] *See* Exchange Rule 11.9(b)(4).

[34] *See* Notice, *supra* note 4, at 10353. Amendment No. 1 updated Exhibit 5 so that the name of the Exchange's book stated therein conforms with the name used in the current Exchange Rules. *See supra*, note 5. Orders utilizing one of the proposed TIF instructions would not be eligible for execution during the Early Trading Session. *See* Notice, *supra* note 4, at 10353, n.32.

[35] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78f(b)(5).

[37] *See supra* section II.

[38] For example, NYSE Arca, Inc. operates an Opening Session that starts at 4:00 a.m. Eastern Time and ends at 9:30 a.m. Eastern Time, and Nasdaq Stock Market LLC operates a pre-market session that also opens at 4:00 a.m. and ends at 9:30 a.m. Eastern Time. *See* NYSE Arca Rule 7.34(a)(1); Nasdaq Rule 4701(g). *See also* Securities Exchange Act Release No. 60605 (September 1, 2009), 74 FR 46277 (September 8, 2009) (SR–CHX–2009–13) (adopting bifurcated post-trading session on the Chicago Stock Exchange, Inc.).

[39] Specifically, on the Exchange, Users may enter an order starting at 6:00 a.m. Eastern Time with a TIF of Regular Hours Only, which designates that the order only be eligible for execution during Regular Trading Hours, which begin at 9:30 a.m. Eastern Time. *See* Exchange Rule 11.b(7); *see also* NASDAQ Rule 4703(a)(7).

[40] *See* Notice, *supra* note 4, at 10355.

[41] *See* 17 CFR 242.600–613.

[42] *See* 17 CFR 242.200–204.

[43] *See* Notice, *supra* note 4, at 10355.

[44] *See id.*

[45] *See* 17 CFR 240.15c3–5.

The Commission further notes the Exchange's discussion of the best execution obligations of Members utilizing the proposed TIF instructions.[47] Specifically, the Exchange states that a Member's best execution obligations may include cancelling an order when market conditions deteriorate and could result in an inferior execution or informing customers when the execution of their order may be delayed intentionally while the Member utilizes reasonable diligence to ascertain the best market for the security.[48] The Exchange further notes that Members will maintain the ability to cancel or modify the terms of an order utilizing any of the proposed TIF instructions at any time, including during the time from when the order is routed to the Exchange until the start of the Pre-Opening Session.[49] As a result, the Exchange states that a Member who utilizes the proposed TIF instructions, but later determines that market conditions favor execution during Early Trading Session, can cancel the order residing at the Exchange and enter a separate order to execute during the Early Trading Session.[50]

Furthermore, the Exchange proposes technical amendments to its Rules to correct erroneous plural words and an inaccurate description of the Pre-Opening Session times in Exchange Rules 11.17 and 14.11, respectively. The Commission believes these proposed amendments would help alleviate potential confusion among Users and Members regarding the operation of Exchange Rules and are, therefore, consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[51] that the proposed rule change (SR–BATS–2016–14), as modified by Amendment No.1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[52]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08969 Filed 4–18–16; 8:45 am]

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[46] *See* Notice, *supra* note 4, at 10355.

[47] *See id.* at 10354–55.

[48] *See id.* n.41.

[49] *See id.* at 10354.

[50] *See id.*

[51] 15 U.S.C. 78s(b)(2).

[52] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77609; File No. SR–NASDAQ–2016–054]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 7018(a)

April 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2016, The NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's transaction fees at Rule 7018(a) to add a new credit tier available to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Rule 7018(a) to add a new credit tier available to a member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. The new credit tier will be available for transactions in securities of all three Tapes[3] and accordingly the new credit tier is being added to Rules 7018(a)(1), (2), and (3), which provide the fees and credits for execution and routing of orders in Nasdaq-Listed securities, New York Stock Exchange ("NYSE")-listed securities, and securities not listed on Nasdaq or NYSE, respectively.

The Exchange is proposing to provide a $0.0030 per share executed credit to a member that has shares of liquidity provided in all securities during the month representing more than 0.20% of Consolidated Volume during the month, through one or more of its Nasdaq Market Center MPIDs. The member must also qualify for the additional $0.05 per contract rebate under Note c(3) of Nasdaq Options Market ("NOM") Rules Chapter XV Section 2(1).[4] The criteria to receive the additional $0.05 per contract rebate under NOM Chapter XV Section 2(1) Note c(3) requires a NOM Participant to (i) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer[5] liquidity in Penny Pilot Options and/or Non-Penny Pilot Options above 0.80% of total industry customer equity and ETF option ADV per day in a month; (ii) add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Non-Penny Pilot Options above 0.15% of total industry customer equity and ETF option ADV contracts per day in a month; and (iii) execute greater than 0.04% of Consolidated Volume via Market-on-Close[6] and Limit-on-Close[7] ("MOC/LOC") volume within the NASDAQ Stock Market Closing Cross[8] within a month. Thus, to qualify under the new proposed credit tiers under Rule 7018(a), an Exchange member must also be a NOM Participant and meet the NOM rebate criteria described above, in addition to the more than 0.20% of Consolidated Volume requirement of the proposed credit tiers.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Tape C securities are those that are listed on the Exchange, Tape A securities are those that are listed on NYSE, and Tape B securities are those that are listed on exchanges other than Nasdaq or NYSE.

[4] The Exchange notes that rebate and criteria required to receive the rebate under NOM Chapter XV Section 2(1) Note c(3) is being amended consistent with the description herein effective as of the date of this proposed rule change to Rule 7018(a).

[5] NOM Chapter XV provides the following defined terms:

The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation ("OCC") which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

The term "Non-NOM Market Maker" or ("O") is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

Under Rule 7018(a), the Exchange currently offers credits based on both Consolidated Volume as well as participation on NOM. For example, the Exchange provides a $0.00295 per share executed credit under Rules 7018(a)(1)–(3) if a member adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Pilot Options and/or Non- Penny Pilot Options of 1.15% or more of total industry ADV in the customer clearing range for Equity and ETF option contracts per day in a month on NOM. Other credits under Rules 7018(a)(1)–(3) do not require participation on NOM. For example, the Exchange provides a $0.0030 per share executed credit under Rules 7018(a)(1)–(3) if a member has shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent [sic] more than 0.75% of Consolidated Volume during the month and member provides a daily average of at least 5 Million shares of non-displayed liquidity.

As noted above, the Exchange is also requiring a member to have MOC/LOC order volume in excess of 0.04% of Consolidated Volume under the new credit tier, thereby requiring a member to provide a significant level of MOC/LOC liquidity in the closing cross, which benefits all market participants. The Exchange does not currently have a credit tier under Rules 7018(a)(1)–(3) provided for displayed quotes/orders that requires a member to have a certain level of MOC/LOC order volume in the closing cross; however, the Exchange does currently provide a credit based on participation in the opening and closing crosses. Specifically, under Rules 7018(a)(1)–(3), the Exchange provides a $0.0028 per share executed credit for displayed quotes/orders if a member has shares of liquidity provided in the Opening and Closing Crosses, excluding MOC, LOC, Market-on- Open, Limit-on-Open, Good-til-Cancelled, and Immediate-or-Cancel orders, through one or more of its Nasdaq Market Center MPIDs that represent [sic] more than 0.01% of Consolidated Volume during the month. The new MOC/LOC requirement of the proposed credit tier will allow a member to qualify based, in part, on participation in the closing cross in MOC and LOC orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed $0.0030 per share executed credit is reasonable because it is consistent with other credits that the Exchange provides to members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity. As a general principle, the Exchange chooses to offer credits to members in return for market improving behavior.

Under Rule 7018(a), the various credits the Exchange provides for displayed quotes/orders require members to significantly contribute to market quality by providing certain levels of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs, and volume on NOM. The proposed credit will be provided to members that not only contribute to the Exchange by providing more than 0.20% of Consolidated Volume through one or more of its Nasdaq Market Center MPIDs during the month, including MOC/LOC orders representing 0.04% of Consolidated Volume, but members must also provide significant levels of liquidity in both Penny Pilot and Non-Penny Pilot Options on NOM.

The Exchange notes that the proposed credit is consistent with other credits that it provides for displayed quotes/orders under the rule, which range from $0.0015 per share executed to $0.00305 per share executed and which apply progressively more stringent requirements in return for higher per share executed credits. Accordingly, the $0.0030 per share executed credit is reasonable.

The proposed $0.0030 per share executed credit is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same credit to all similarly situated members. Thus, if a member meets the requirements, it will receive the credit unless it qualifies for a higher credit. Moreover, as discussed above, some credit tiers require participation on NOM while others do not. As such, members will continue to have opportunities to qualify for similar credits based on market participation not tied to NOM.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a

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The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[6] A "Market On Close Order" is an Order Type entered without a price that may be executed only during the Nasdaq Closing Cross. Subject to the qualifications provided below, MOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, an MOC Order can be cancelled and/or modified only if the Participant requests that Nasdaq correct a legitimate error in the Order (*e.g.*, Side, Size, Symbol, or Price, or duplication of an Order). MOC Orders cannot be cancelled or modified at or after 3:55 p.m. ET for any reason. An MOC Order shall execute only at the price determined by the Nasdaq Closing Cross. *See* Rule 4702(b)(11).

[7] A "Limit On Close Order" is an Order Type entered with a price that may be executed only in the Nasdaq Closing Cross, and only if the price determined by the Nasdaq Closing Cross is equal to or better than the price at which the LOC Order was entered. Subject to the qualifications provided below, LOC Orders may be entered, cancelled, and/or modified between 4 a.m. ET and immediately prior to 3:50 p.m. ET. Between 3:50 p.m. ET and immediately prior to 3:55 p.m. ET, an LOC Order can be cancelled but not modified, and only if the Participant requests that Nasdaq correct a legitimate error in the Order (*e.g.*, Side, Size, Symbol, or Price, or duplication of an Order). *See* Rule 4702(b)(12).

[8] *See* Rule 4754.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

particular venue to be excessive, or rebate opportunities available at other venues to be more favorable.

In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed new credit provided to a member for execution of securities of each of the three Tapes do [sic] not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. The proposed changes are designed to reward market-improving behavior by providing a new credit tier based on various measures of such behavior, which may encourage other market venues to provide similar credits to improve their market quality. Thus, the Exchange does not believe that the proposed changes will impose any burden on competition, but may rather promote competition.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–054 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–054. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–054, and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08945 Filed 4–18–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77605; File No. SR–NYSEMKT–2016–43]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 72—Equities Relating to Setting Interest

April 13, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 29, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 72—Equities relating to setting interest. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE MKT Rule 72—Equities ("Rule 72") relating to setting interest to provide that interest that establishes a new Exchange best bid or offer ("BBO") would be considered setting interest even if a Limit Order designated Add Liquidity Only ("ALO") or sell short order during a Short Sale Period, as defined in Rule 440B(d)—Equities, is re-priced and displayed at the same price as such interest that became the Exchange BBO.

Background

Under Rule 72(a)(ii), a bid or offer, including pegging interest, is considered the "setting interest" when it is established as the only displayable bid or offer made at a particular price and is the only displayable interest when such price is or becomes the Exchange BBO. Setting interest is entitled to priority for allocation of executions at that price, as provided for under Rule 72. If there is no setting interest, all interest is allocated on parity pursuant to Rule 72(c).[4]

In 2008, when the Exchange added the current form of Rule 72, current paragraph (a)(ii)(G) of the rule provided that if, at the time non-pegging interest becomes the Exchange BBO, an e-Quote is pegging to such non-pegging interest, all such interest was considered to be entered simultaneously and, therefore, no interest was considered the setting interest.[5] Because the Exchange believed that permitting pegging e-Quotes to eliminate the priority to which a non-pegging e-Quote might otherwise be entitled could disincentivize aggressive displayed quoting, the Exchange amended Rule 72(a)(ii)(G) to provide that non-pegging interest that becomes the Exchange BBO will be considered the setting interest even if an e-Quote is pegging to such non-pegging interest.[6] The Exchange's goal in providing priority to setting interest was to create an incentive for participants to display aggressive prices. The Exchange amended Rule 72(a)(ii)(G) in 2011 because it believed a participant may be reluctant to enter such displayed interest if a non-displayed pegging e-Quote could deny priority to such displayed interest.[7] Because pegging interest cannot peg to other pegging interest, the current rule specifies that non-pegging interest would retain priority if pegging interest is pegging to such non-pegging interest.

Proposed Rule Change

The Exchange believes there are additional circumstances when orders that are re-priced due to an external pricing change may similarly disincentivize aggressive displayed quoting by permitting such re-priced interest to eliminate the setting priority to which non-pegging interest may otherwise be entitled. For example, similar to pegging interest,[8] which is re-priced based on changes to the PBBO, a Limit Order to buy (sell) designated ALO may be re-priced and re-displayed based on changes to the best-priced sell (buy) interest at the Exchange.[9] Likewise, sell short orders that are re-priced to a Permitted Price during a Short Sale Period may be re-priced and re-displayed as the national best bid ("NBB") moves.[10] In both these scenarios, the participant sending aggressive display interest would be unaware that when it sets a new Exchange BBO, existing interest on the Exchange may be eligible to be re-priced to that new Exchange BBO price.

For the same reason as the Exchange filed to change Rule 72(a)(ii)(G) in 2011, the Exchange is proposing that Limit Orders designated ALO or sell short orders during a Short Sale Period that are re-priced and displayed based on changes to the best-priced sell (buy) interest or NBB would not deny priority to displayed interest that sets a new Exchange BBO. In addition, the Exchange proposes to amend Rule 72(a)(ii)(G) to provide that if interest becomes the Exchange BBO, it would retain its priority (*i.e.,* considered setting interest) even if pegging interest, Limit Orders designated ALO, or sell short orders during a Short Sale Period under Rule 440B(e) are re-priced and displayed at the same price as such interest. Finally, the Exchange proposes a non-substantive amendment to delete the cross-reference to Rule 13—Equities—Pegging Interest.

The Exchange also proposes to amend Rule 72(a)(ii)(G) to reflect that any interest, and not just "non-pegging" interest, is eligible to be setting interest even if other interest re-prices and is displayed at the new Exchange BBO. As provided for in Rule 13(f)(1)(B)(iii)—Equities, pegging interest may establish an Exchange BBO, which would occur if pegging interest pegs to a PBBO that is more aggressively priced than the Exchange's current BBO. For example, if the PBB is higher than the Exchange BB and the Exchange receives pegging interest to buy with a limit price equal to or higher than such PBB price, the pegging interest would peg to the PBB and be displayed as a new Exchange BB. If there were no other interest when the pegging interest establishes the Exchange BBO, such pegging interest would be entitled to priority under Rule 72(a)(ii).[11] However, if more than one pegging interest is pegging to the PBBO and together they establish a new Exchange BBO, Rule 72(a)(ii) would not provide either pegging interest with priority. Current Rule 72(a)(ii)(G), which provides that "non-pegging interest" is considered setting interest if it becomes the Exchange BBO, even if pegging interest is pegging to such non-pegging interest, is consistent with Rule 72(a)(ii) because any such pegging interest would not be the only displayable interest.

As discussed above, the Exchange proposes to amend Rule 72(a)(ii)(G) to specify additional interest that could reprice without denying priority to interest that sets the Exchange BBO. As a result, such non-pegging interest could be repriced to join pegging interest that establishes the Exchange BBO and that otherwise would be entitled to be setting interest. The Exchange therefore proposes that if a single pegging interest establishes the BBO, it would be entitled to priority even if a Limit Order designated ALO or short sale order during a Short Sale Period is re-priced and displayed at that same price. In such scenario, the pegging interest would be the aggressively-priced interest that established the new Exchange BBO, and other interest that re-prices at that price would be the reactive orders. Accordingly, to address such scenario, the Exchange proposes to change the references in Rule 72(a)(ii)(G) from "non-pegging interest" to "interest."

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[4] *See* Rule 72(c)(v).

[5] *See* Securities Exchange Act Release No. 59022 (Nov. 26, 2008), 73 FR 73683 (Dec. 3, 2008) (SR–NYSEALTR–2008–10) (adopting the New York Stock Exchange LLC's New Market Model rules, including Rule 72). *See also* Rule 70—Equities (defining e-Quotes and d-Quotes).

[6] *See* Securities Exchange Act Release No. 65884 (Dec. 5, 2011), 76 FR 77038 (Dec. 9, 2011) (SR–NYSEAmex–2011–91) (Notice of filing and immediate effectiveness of proposed rule change amended Rule 72).

[7] Because the Exchange does not publicly identify interest as pegging interest that is eligible to re-price based on changes to the PBBO, a participant seeking to set the Exchange BBO would be unaware that one or more pegging interest could join it at the Exchange BBO.

[8] Pegging interest is defined in Rule 13(f)(1)—Equities as displayable or non-displayable interest to buy or sell at a price set to track the PBBO as the PBBO changes and must be an e-Quote or d-Quote.

[9] *See* Rule 13(e)(1)—Equities (defining ALO modifier) and Supplementary Material .10 to Rule 13—Equities (defining the term "best-priced sell (buy) interest" to be the lowest-priced sell (highest-priced buy) interest against which incoming buy (sell) interest would be required to execute with and/or route to, including Exchange displayed offers, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized sell (buy) interest, and protected offers (bids) on away markets).

[10] *See* Rule 440B(e)—Equities.

[11] Rule 72(a)(ii) explicitly includes pegging interest as being setting interest entitled to priority for allocation of executions, when such interest is established as the only displayable bid or offer made at a particular price and is the only displayable interest when such price is or becomes the Exchange BBO.

Currently, in limited circumstances, Limit Orders designated ALO that are re-priced to a price other than its limit price to join interest that sets a new Exchange BBO do not deny priority to the interest that set the Exchange BBO.[12] Because of technology changes associated with implementing this rule change for all circumstances when Limit Orders designated ALO and sell short orders during a Short Sale Period reprice to join interest that sets a new Exchange BBO, the Exchange will announce by Trader Update the full implementation of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change meets these requirements because it would permit interest that sets a new Exchange BBO, including pegging interest that establishes an Exchange BBO, to be considered the setting interest and therefore retain priority, as provided for under Rule 72, over other interest that reacts and re-prices based on such interest setting a new Exchange BBO. The current rule already provides for non-pegging interest to retain priority if pegging interest pegs to such price, and the proposed rule change would afford similar treatment to any interest that establishes an Exchange BBO if pegging interest, Limit Orders designated ALO, or sell short orders during a Short Sale Period are re-priced and displayed at the same price as such interest. In addition, the proposed rule change is consistent with current rules in that it would allow for pegging interest that is entitled to be setting interest, as provided for in Rules 13(f)(1)(B)(iii)—Equities and 72(a)(ii), to retain priority if joined at that price by a Limit Order designated ALO or a sell short order during a Short Sale Period. Accordingly, the proposal is designed to incentivize and reward aggressive displayed quoting by market participants, which would remove impediments to and perfect the mechanism of a free and open market and national market system by contributing to the market quality of the Exchange and the national market system in general. In this regard, the Exchange believes that this proposed change would have positive impact on the Exchange's market, on the Exchange's members, and on investors generally by promoting the display of aggressively-priced liquidity on a registered exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to promote the additional display of aggressively-priced liquidity on the Exchange by allowing interest that sets a new Exchange BBO to be considered setting interest even if other orders react and re-price based on such interest setting a new Exchange BBO.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

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[12] *See* Trader Update dated February 17, 2016, available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Trader_Update_Priority_Allocation.pdf.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 15 U.S.C. 78s(b)(2)(B).

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2016–43 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08942 Filed 4–18–16; 8:45 am]

BILLING CODE 8011–01–P

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[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77604; File No. SR–NYSE–2016–29]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List for Equity Transactions in Stocks With a per Share Stock Price More Than $1.00

April 13, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 31, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List for equity transactions in stocks with a per share stock price more than $1.00 to (1) add a new default charge for transactions that remove liquidity from the Exchange; (2) make certain pricing changes applicable to Supplemental Liquidity Providers ("SLPs") on the Exchange; and (3) eliminate the fee for additional electronic copies of the Merged Order Report. The Exchange proposes to implement these changes to its Price List effective April 1, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, on the Commission's Web site at *http//www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) add a new default charge for transactions removing liquidity from the Exchange for member firms whose adding liquidity falls below a specified threshold; and (2) add a new SLP Tier 1A; lower the credits for Non-Displayed Reserve Orders for existing SLP Tiers 1 through 3; and, for SLPs that are also Designated Market Makers ("DMMs"), replace the numeric benchmark for calculating tier-based credits. The proposed changes would only apply to credits in transactions in securities priced $1.00 or more.

The Exchange also proposes to eliminate the fee for additional electronic copies of the Merged Order Report.

The Exchange proposes to implement these changes effective April 1, 2016.

Charges for Removing Liquidity

The Exchange currently charges a fee of $0.00275 for non-Floor broker transactions that remove liquidity from the Exchange, including those of DMMs.

The Exchange proposes to retain this charge and introduce a slightly higher default charge of $0.0030 for non-Floor broker transactions removing liquidity from the Exchange by member organizations with an Adding ADV,[4] excluding any liquidity added by a DMM, of less than 250,000 ADV[5] on the Exchange during the billing month.

Changes Applicable to SLPs

SLPs are eligible for certain credits when adding liquidity to the Exchange. The amount of the credit is currently determined by the "tier" for which the SLP qualifies, which is based on the SLP's level of quoting and ADV of liquidity added by the SLP in assigned securities.

Currently, SLP Tier 3 provides that when adding liquidity to the NYSE in securities with a share price of $1.00 or more, an SLP is eligible for a credit of $0.0023 per share traded if the SLP (1) meets the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B and (2) adds liquidity for assigned SLP securities in the aggregate[6] of an ADV of more than 0.20% of NYSE consolidated ADV ("CADV"),[7] or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a),[8] more than 0.15% of

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] "Adding ADV" is when a member organization has ADV that adds liquidity to the Exchange during the billing month. Adding ADV excludes any liquidity added by a Designated Market Maker.

[5] The defined term, "ADV," is used here as defined in footnote 2 to the Price List.

[6] Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization ("SLP-Prop") or a registered market maker at the Exchange ("SLMM"). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

[7] NYSE CADV is defined in the Price List as the consolidated average daily volume of NYSE-listed securities.

[8] Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM.

NYSE CADV. The SLP Tier 3 credit in the case of Non-Displayed Reserve Orders is $0.0009.

SLP Tier 2 provides that an SLP adding liquidity in securities with a per share price of $1.00 or more is eligible for a per share credit of $0.0026 if the SLP: (1) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.45% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.30% of NYSE CADV.[9] The SLP Tier 2 credit in the case of Non-Displayed Reserve Orders is $0.0012.

SLP Tier 1 provides that an SLP adding liquidity in securities with a per share price of $1.00 or more is eligible for a per share credit of $0.0029 if the SLP: (1) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all for assigned SLP securities in the aggregate of an ADV of more than 0.90% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.65% of NYSE CADV. The SLP Tier 1 credit in the case of Non-Displayed Reserve Orders is $0.0015.

The Exchange proposes the following changes applicable to SLPs on the Exchange.

Credits for Non-Displayed Reserve Orders

The Exchange proposes to decrease the credit for a Non-Displayed Reserve Order by $0.0003. Specifically, for Non-Displayed Reserve Orders the SLP Tier 1 credit would decrease from $0.0015 to $0.0012; the SLP Tier 2 credit would decrease from $0.0012 to $0.0009; and the SLP Tier 3 credit would decrease from $0.0009 to $0.0006.

Numeric Benchmark for Calculating Tier-Based Credits

For SLP Tier 3, SLP Tier 2, and SLP Tier 1, the Exchange proposes to replace the ADV percentage benchmark for credits for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A) representing a fixed discount of NYSE CADV with a dynamic discount based on the DMM's percentage of NYSE CADV in DMM assigned securities for the prior quarter. More specifically, the Exchange proposes that the current ADV percentage requirement for each tier would be discounted by the DMM's percentage of NYSE CADV for the prior quarter in DMM assigned securities as of the last business day of the prior month. The Exchange believes that a calculation utilizing the most recent quarter's percentage of DMM CADV would result in a fairer discount for SLPs that are also DMMs than the current fixed percentage, and thus represent a fairer benchmark for determining the appropriate credit for market participants that provide liquidity to the Exchange. SLPs that have DMM assigned securities with a larger percentage of NYSE CADV will receive a larger discount than SLPs with DMM assigned securities with a smaller percentage of NYSE CADV.

For SLP Tier 3, the Exchange proposes that the ADV percentage requirement for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A) change from more than 0.15% of NYSE CADV to more than the current 0.20% requirement after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. For SLP Tier 2, the Exchange proposes that the requirement change from more than 0.30% to more than the current 0.45% requirement after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. Finally, for SLP Tier 1, the Exchange proposes that the requirement change from more than 0.65% to more than the current 0.90% requirement after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.

As proposed, the NYSE CADV in DMM assigned securities would be on a prior quarter basis and the DMM assigned securities list applied to the quarter would be as of the last business day of the prior month. This would enable the Exchange to measure stock transfers in the prior month and among DMMs. For example, for April 2016, the calculation for each tier would be based on the 1st quarter of 2016 by reference to the DMM stock list for March 31, 2016, the last business day of the prior month. A DMM security that did not trade in prior quarter would not be used in measuring the discount. Securities assigned to the SLP's DMM in the current month will also not be used in measuring the discount. Further, days on which the Exchange closes early would be included in calculating the discount. This is consistent with the way in which the Exchange calculates other fees.[10] If a SLP has no DMM assigned securities as of the last day of the prior month or if the DMM assigned securities did not have any NYSE CADV in the prior quarter, then the SLP will not be assigned a discount for the current month.

The following is an example of how the proposed change would operate by reference to SLP Tier 3. Assume an SLP that is also a DMM has DMM assigned securities with a NYSE CADV in the prior quarter of 570 million shares. Assume that total NYSE CADV was 3.8 billion shares for the prior quarter. Under these circumstances, the requirement for SLP Tier 3 for such a SLP would be 0.17%, using a 15% discount based on 570 million shares of NYSE CADV in the SLPs DMM assigned securities divided by 3.8 billion shares of total NYSE CADV, applied to the current 0.20% SLP Tier 3 requirement for all SLPs.

The Exchange also proposes to add a footnote designated with an asterisk providing that SLPs that become DMMs on the Exchange after the beginning of a billing month would not be eligible until the next full billing month.

The Exchange does not propose any changes to the SLP Non-Tier.

New SLP Tier 1A

The Exchange proposes a new, fourth SLP Tier designated "1A" that would provide that an SLP adding liquidity in securities with a per share price of $1.00 or more is eligible for a per share credit of $0.00275 if the SLP: (1) Meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B; and (2) adds liquidity for all for assigned SLP securities in the aggregate of an ADV of more than 0.60% of NYSE CADV, or with respect to an SLP that is also a DMM and subject to Rule 107B(i)(2)(a), more than 0.60% after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. The proposed SLP Tier 1A credit in the case of Non-Displayed Reserve Orders would be $0.00105. The Exchange believes that the new tier will provide greater incentives for member organizations between Tier 1 (.90%) and Tier 2 levels (.45%) to add liquidity to the Exchange.

Merged Order Report

The Exchange currently charges member organizations $3.00 per copy (the first copy is provided at no charge) per 1,000 records for machine readable output and print image transmission copies of the Merged Order Report (the "Report"). The Exchange no longer provides the Report in these formats, which required individual transmissions each time a member organization wanted to access the Report. Instead, the Exchange provides a single, web-based transmission of the Report. Since the first copy of the Report is not charged, the Exchange proposes to eliminate the fee. The Exchange proposes to retain the current charge for hard copies of the Report.

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[9] In determining whether an SLP meets the requirement to add liquidity in the aggregate of an ADV of more than 0.35% or 0.30% depending on whether the SLP is also a DMM, the SLP may include shares of both an SLP-Prop and an SLMM of the same member organization.

[10] *See* Fee Schedule, footnote 4.

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The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Charges for Removing Liquidity

The Exchange believes that introducing a slightly higher default charge for non-Floor broker transactions removing liquidity from the Exchange for member organizations with an Adding ADV, excluding DMM liquidity, of less than 250,000 ADV during a billing month is reasonable. The Exchange believes that the proposed rate change will incentivize submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange also believes that the proposed fee is equitable because it would apply to all similarly situated member organizations.

The proposed fee also is equitable and not unfairly discriminatory because it would be consistent with the applicable rate on other marketplaces. For example, EDGA Exchange, Inc. ("EDGA") provides a credit for removing liquidity, subject to Footnote 1 to EDGA's fee schedule, which imposes a charge of $0.0030 per share for removing liquidity on members that do not add and/or route a minimum ADV, measured monthly, of 50,000 shares on EDGA.[13] Given the Exchange's and EDGA's relative size and market share, the Exchange believes that EDGA's 50,000 share requirement is comparable to the proposed 250,000 ADV requirement.

New SLP Tier 1A

The Exchange believes that proposal to introduce a new SLP Tier 1A is reasonable because it provides SLPs as well as SLPs that are also DMMs with an additional way to qualify for a rebate, thereby providing SLPs with greater flexibility and creating an added incentive for SLPs to bring additional order flow to a public market. In particular, as noted above, the Exchange believes that the new tier will provide greater incentives for member organizations between Tier 1 (.90%) and Tier 2 levels (.45%) to add liquidity to the Exchange.

Credits for Non-Displayed Reserve Orders

The Exchange believes that the proposed rule change to reduce the credit for Non-Displayed Reserve Orders that provide liquidity is reasonable, equitable and not unfairly discriminatory because it strengthens the relative incentive for SLPs to submit displayed liquidity versus non-displayed liquidity to the Exchange. The Exchange also believes that the proposed lower credit is equitable and not unfairly discriminatory because it would apply equally to all SLPs.

Numeric Benchmark for Calculating Tier-Based Credits

The Exchange believes that replacing the numeric benchmark representing a fixed discount of NYSE CADV for calculating tier-based credits for SLPs that are also DMMs and subject to Rule 107B(i)(2)(A) with the current numeric benchmark applicable to other SLPs for each tier discounted by the DMM's percentage of NYSE consolidated average daily volume for the prior quarter in DMM assigned securities is reasonable. As noted above, the Exchange believes that the proposed benchmark would result in a more accurate discount for market participants that provide liquidity to the Exchange and would thus be fairer. The Exchange notes that for some SLPs with DMMs, the proposed change may result in a lower requirement than the current tier requirement, and for some SLPs the change may result in a higher requirement, based on the NYSE CADV in the SLP's DMM assigned securities than the current tier requirement. The Exchange believes that more accurate and fairer discounts would incentivize these market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. Further, the Exchange believes that the proposed benchmark is equitable because it would apply to all similarly situated SLPs and provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange further believes that the proposal is reasonable, equitable and not unfairly discriminatory because other exchanges have implemented multiple step up tiers based on a firm's individual trading activity rather than a market baseline.[14]

Merged Order Report

The Exchange believes that eliminating the per copy fee for the Merged Order Report is reasonable because the Exchange does not charge for the first copy and, in light of the Exchange's utilization of web-based transmission of the Report, the need to transmit multiple copies to the member organizations has been eliminated. The Exchange believes that the proposed elimination of the per copy fee is equitable as the costs it was designed to defray have been eliminated by the web-based method of publishing the Report. As noted above, the Exchange proposes to retain the current charge for hard copies of the Report.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[15] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See http://www.bats.com/us/equities/membership/fee_schedule/edga/.*

[14] *See, e.g.,* Securities Exchange Act Release No. 34–76084 (October 6, 2015), 80 FR 61529 (October 13, 2015) (SR–NYSEArca–2015–87).

[15] 15 U.S.C. 78f(b)(8).

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[16] of the Act and subparagraph (f)(2) of Rule 19b–4[17] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–29 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08941 Filed 4–18–16; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77602; File No. SR-BatsBYX–2016–03]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rule 8.17 To Provide a Process for an Expedited Suspension Proceeding and Rule 12.15 To Prohibit Layering and Spoofing

April 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to adopt a new rule to clearly prohibit disruptive quoting and trading activity on the Exchange, as further described below. Further, the Exchange proposes to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction

The Exchange is filing this proposal to adopt a new rule to clearly prohibit disruptive quoting and trading activity on the Exchange and to amend Exchange Rules to permit the Exchange to take prompt action to suspend Members or their clients that violate such rule. The proposal is identical to the proposal of Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. ("BZX"),[3] which was recently approved by the Commission.[4]

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the Exchange's Rules.[5] Further, the Exchange's Rules are required to be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade. . . . and, in general, to protect investors and the public interest."[6] In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity that is both operated directly by Exchange staff and by staff of the Financial Industry Regulatory Authority ("FINRA") pursuant to a Regulatory Services Agreement ("RSA"). When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange or FINRA (acting as an agent of the Exchange) conducts an investigation into the activity, requesting additional information from the Member or Members involved. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules have been identified and confirmed, the Exchange or FINRA as its agent will commence the enforcement process, which might result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or even a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period is generally necessary and appropriate to afford the subject Member adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange.

In recent years, several cases have been brought and resolved by an affiliate of the Exchange and other SROs that involved allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering[7] or spoofing.[8] An affiliate of the Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, in accordance with Exchange Rules and the Act, the Members responsible for such conduct or responsible for their customers' conduct were allowed to continue the disruptive quoting and trading activity during the entirety of the subsequent lengthy investigation and enforcement process. The Exchange believes that it should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange if a Member is engaging in or facilitating disruptive quoting and trading activity and the Member has received sufficient notice with an opportunity to respond, but such activity has not ceased.

The following two examples are instructive on the Exchange's rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (the "Firm") and its CEO were barred from the industry for, among other things, supervisory violations related to a failure by the Firm to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.[9] The Firm's sole business was to provide trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by the Firm to U.S. markets originated directly or indirectly from foreign clients of the Firm. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and FINRA and other SROs identified clear patterns of the behavior in 2007 and 2008. Although the Firm and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, the Firm took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the Firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

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[3] The Exchange notes that the membership of the Exchange and the membership of BZX is nearly identical. BZX members and the public had the opportunity to comment—and did comment—on an identical BZX proposal to the current proposal before the Staff approved the BZX proposal. *See https://www.sec.gov/comments/sr-bats-2015-101/bats2015101.shtml.*

[4] *See* Securities Exchange Act Release No. 77171 (February 18, 2016) (SR–BATS–2015–101).

[5] 15 U.S.C. 78f(b)(1).

[6] 15 U.S.C. 78f(b)(5).

[7] "Layering" is a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[8] "Spoofing" is a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

[9] *See Biremis Corp. and Peter Beck,* FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (the "Firm") settled a regulatory action in connection with the Firm's provision of a trading platform, trade software and trade execution, support and clearing services for day traders.[10] Many traders using the Firm's services were located in foreign jurisdictions. The Firm ultimately settled the action with FINRA and several exchanges for a total monetary fine of $3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of $2.5 million.[11] Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, the Firm also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. The Firm was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years.

The Exchange also notes the current criminal proceedings that have commenced against Navinder Singh Sarao. Mr. Sarao's allegedly manipulative trading activity, which included forms of layering and spoofing in the futures markets, has been linked as a contributing factor to the "Flash Crash" of 2010, and yet continued through 2015.

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below.

Rule 8.17—Expedited Client Suspension Proceeding

The Exchange proposes to adopt new Rule 8.17 to set forth procedures for issuing suspension orders, immediately prohibiting a Member from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures would also provide the Exchange the authority to order a Member to cease and desist from providing access to the Exchange to a client of the Member that is conducting disruptive quoting and trading activity in violation of proposed Rule 12.15.

Under proposed paragraph (a) of Rule 8.17, with the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, the Office of General Counsel or Regulatory Department of the Exchange (such departments generally referred to as the "Exchange" for purposes of proposed Rule 8.17) may initiate an expedited suspension proceeding with respect to alleged violations of Rule 12.15, which is proposed as part of this filing and described in detail below. Proposed paragraph (a) would also set forth the requirements for notice and service of such notice pursuant to the Rule, including the required method of service and the content of notice.

Proposed paragraph (b) of Rule 8.17 would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers. The proposed provision is consistent with existing Exchange Rule 8.6 and includes the requirement for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned. In addition to recusal initiated by such a Hearing Officer, a party to the proceeding will be permitted to file a motion to disqualify a Hearing Officer. However, due to the compressed schedule pursuant to which the process would operate under Rule 8.17, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 8.6(b), if the Hearing Panel believes the Respondent has provided satisfactory evidence in support of the motion to disqualify, the applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 8.6(a). If the Hearing Panel determines that the Respondent's grounds for disqualification are insufficient, it shall deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will proceed with the hearing.

Under paragraph (c) of the proposed Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed. Proposed paragraph (c) would also govern how the hearing is conducted, including the authority of Hearing Officers, witnesses, additional information that may be required by the Hearing Panel, the requirement that a transcript of the proceeding be created and details related to such transcript, and details regarding the creation and maintenance of the record of the proceeding. Proposed paragraph (c) would also state that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, as proposed, if the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d) of the proposed Rule, the Hearing Panel would be authorized to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed paragraph (d) would also describe the content, scope and form of a suspension order. As proposed, a suspension order shall be limited to ordering a Respondent to cease and desist from violating proposed Rule 12.15, and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 12.15. Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from. Finally, the order shall include the date and hour of its issuance. As proposed, a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below. Finally, paragraph (d) would require service of the Hearing Panel's decision and any suspension order consistent with other portions of the proposed rule related to service.

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[10] *See Hold Brothers On-Line Investment Services, LLC*, FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

[11] *In the Matter of Hold Brothers On-Line Investment Services, LLC*, Exchange Act Release No. 67924, September 25, 2012.

Proposed paragraph (e) of Rule 8.17 would state that at any time after the Office of Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) of Rule 8.17 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Finally, proposed paragraph (f) would provide that sanctions issued under the proposed Rule 8.17 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Rule 12.15—Disruptive Quoting and Trading Activity Prohibited

The Exchange currently has authority to prohibit and take action against manipulative trading activity, including disruptive quoting and trading activity, pursuant to its general market manipulation rules, including Rule 3.1. The Exchange proposes to adopt new Rule 12.15, which would more specifically define and prohibit disruptive quoting and trading activity on the Exchange. As noted above, the Exchange also proposes to apply the proposed suspension rules to proposed Rule 12.15.

Proposed Rule 12.15 would prohibit Members from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Interpretation and Policies .01 and .02 of the Rule, including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers.

To provide proper context for the situations in which the Exchange proposes to utilize its proposed authority, the Exchange believes it is necessary to describe the types of disruptive quoting and trading activity that would cause the Exchange to use its authority. Accordingly, the Exchange proposes to adopt Interpretation and Policy .01 and .02, providing additional details regarding disruptive quoting and trading activity. Proposed Interpretation and Policy .01(a), which describes disruptive quoting and trading activity containing many of the elements indicative of layering, would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (a) A party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and (b) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and (c) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the "Contra-Side Orders") that are subsequently executed; and (d) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders. Proposed Interpretation and Policy .01(b), which describes disruptive quoting and trading activity containing many of the elements indicative of spoofing, would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present: (a) A party narrows the spread for a security by placing an order inside the national best bid or offer; and (b) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in (a) that narrowed the spread. The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above. The Exchange further believes that the proposed descriptions will provide Members with clear descriptions of disruptive quoting and trading activity that will help them to avoid engaging in such activities or allowing their clients to engage in such activities.

The Exchange proposes to make clear in Interpretation and Policy .02 that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the rule to apply. For instance, with respect to the pattern defined in proposed Interpretation and Policy .01(a) it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders. The Exchange also proposes to make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues.

In sum, proposed Rule 12.15 coupled with proposed Rule 8.17 would provide the Exchange with authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange. Below is an example of how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive quoting and trading activity. After an initial investigation the Exchange would then contact the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the Member that would include details regarding the alleged violations as well as the proposed sanction. In such a case the proposed sanction would likely be to order the Member to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such Member unless and until such action is taken. The Member would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding. If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the Member to cease providing access to the client at issue and suspending such Member unless and until such action is taken. If such Member wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such Member could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the Member pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.[12]

The Exchange reiterates that it already has broad authority to take action against a Member in the event that such Member is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent cases like the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have the authority to promptly initiate expedited suspension proceedings against any Member who has demonstrated a clear pattern or practice of disruptive quoting and trading activity, as described above, and to take action including ordering such Member to terminate access to the Exchange to one or more of such Member's clients if such clients are responsible for the activity. The Exchange recognizes that its proposed authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the proposed rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of Respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the Exchange believes that it would use this authority in limited circumstances, when necessary to protect investors, other Members and the Exchange. Further, the Exchange believes that the proposed expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive quoting and trading activity.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act[13] and further the objectives of Section 6(b)(5) of the Act[14] because they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of Rule 12.15 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[15] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange also believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other Members and their customers as well as the Exchange if conduct is allowed to continue on the Exchange. As explained above, the Exchange notes that it has defined the prohibited disruptive quoting and trading activity by modifying the traditional definitions of layering and spoofing[16] to eliminate an express intent element that would not be proven on an expedited basis and would instead require a thorough investigation into the activity. As noted throughout this filing, the Exchange believes it is necessary for the protection of investors to make such modifications in order to adopt an expedited process rather than allowing disruptive quoting and trading activity to occur for several years. Through this proposal, the Exchange does not intend to modify the definitions of spoofing and layering that have generally been used by the Exchange and other regulators in connection with actions like those cited above.

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[12] The proposal will not supplant the Exchange's current investigative and enforcement process. Currently, when Exchange surveillance staff identifies a pattern of potentially disruptive quoting and trading activity, the staff conducts an initial analysis and investigation of that activity. After the initial investigation, the Exchange then contacts the Member responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. The Exchange will continue this practice after this proposal becomes operative. The Exchange will only seek an expedited suspension when—after multiple requests to a Member for an explanation of activity—it continues to see the same pattern of manipulation from the same Member and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[16] *See supra*, notes 7 and 8.

The Exchange further believes that the proposal is consistent with Section 6(b)(7) of the Act,[17] which requires that the rules of an exchange "provide a fair procedure for the disciplining of members and persons associated with persons . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof." Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,[18] which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within proposed Rule 8.17. Importantly, as noted above, the Exchange anticipates using the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other Members and the Exchange, and even in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on their market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other Members and the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6)thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange asserts that the waiver of the 30-day operative delay will allow the Exchange to immediately enforce the proposed rules to protect its members and market participants from the behavior proscribed by the proposed rules. The Exchange further states that waiver of the operative delay is consistent with the protection of investors and the public interest because it is designed to protect investors and the public from disruptive quoting and trading activity. Furthermore, the Commission notes that it recently approved an identical expedited disciplinary procedure for an affiliate of the Exchange, BatsBZX,[25] and the Exchange represents above that the membership of the Exchange and the membership of BatsBZX is nearly identical.[26] Based on the foregoing, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBYX–2016–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBYX–2016–03. This file number should be included on the subject line if email is used. To help the

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[17] 15 U.S.C. 78f(b)(7).

[18] 15 U.S.C. 78f(d)(1).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See supra,*Error! Bookmark not defined..

[26] *See supra,* Error! Bookmark not defined..

[27] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsBYX-2016-03, and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016-08940 Filed 4-18-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC-32071; 812-14604]

Aptus Capital Advisors, LLC, et al.; Notice of Application

April 13, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of certain open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

APPLICANTS: Aptus Capital Advisors, LLC ("Initial Adviser"), ETF Series Solutions ("Trust") and Quasar Distributors, LLC ("Quasar").

FILING DATES: The application was filed on January 20, 2016, and amended on March 23, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 9, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: Initial Adviser: 407 Johnson Ave., Fairhope, AL 36532; the Trust and Quasar: 615 East Michigan Street, 4th Floor, Milwaukee, Wisconsin 53202.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, at (202) 551-6812, or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551-8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as a series open-end management investment company. Each series will operate as an exchange traded fund ("ETF").

2. The Initial Adviser will be the investment adviser to the new series of the Trust ("Initial Fund"). Each Adviser (as defined below) will be registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser may enter into sub-advisory agreements with one or more investment advisers to act as sub-advisers to particular Funds (each, a "Sub-Adviser"). Any Sub-Adviser will either be registered under the Advisers Act or will not be required to register thereunder.

3. The Trust will enter into a distribution agreement with one or more distributors. Each distributor for a Fund will be a broker-dealer ("Broker") registered under the Securities Exchange Act of 1934 ("Exchange Act") and will act as distributor and principal underwriter ("Distributor") for one or more of the Funds. No Distributor will be affiliated with any national securities exchange, as defined in Section 2(a)(26) of the Act ("Exchange"). The Distributor for each Fund will comply with the terms and conditions of the requested order. Quasar, a Delaware limited liability company and broker-dealer registered under the Exchange Act, will act as the initial Distributor of the Funds.

4. Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future ("Future Funds" and together with the Initial Fund, "Funds"), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Future Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an "Adviser") and

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[28] 17 CFR 200.30-3(a)(12), (59).

(b) comply with the terms and conditions of the application.[1]

5. Each Fund will hold certain securities, currencies, other assets, and other investment positions ("Portfolio Holdings") selected to correspond generally to the performance of its Underlying Index. The Underlying Indexes will be comprised solely of equity and/or fixed income securities issued by one or more of the following categories of issuers: (i) Domestic issuers and (ii) non-domestic issuers meeting the requirements for trading in U.S. markets. Other Funds will be based on Underlying Indexes that will be comprised solely of foreign and domestic, or solely foreign, equity and/or fixed income securities ("Foreign Funds").

6. Applicants represent that each Fund will invest at least 80% of its assets (excluding securities lending collateral) in the component securities of its respective Underlying Index ("Component Securities") and TBA Transactions,[2] and in the case of Foreign Funds, Component Securities and Depositary Receipts [3] representing Component Securities. Each Fund may also invest up to 20% of its assets in certain index futures, options, options on index futures, swap contracts or other derivatives, as related to its respective Underlying Index and its Component Securities, cash and cash equivalents, other investment companies, as well as in securities and other instruments not included in its Underlying Index but which the Adviser believes will help the Fund track its Underlying Index. A Fund may also engage in short sales in accordance with its investment objective.

7. Each Trust may issue Funds that seek to track Underlying Indexes constructed using 130/30 investment strategies ("130/30 Funds") or other long/short investment strategies ("Long/Short Funds"). Each Long/Short Fund will establish (i) exposures equal to approximately 100% of the long positions specified by the Long/Short Index [4] and (ii) exposures equal to approximately 100% of the short positions specified by the Long/Short Index. Each 130/30 Fund will include strategies that: (i) Establish long positions in securities so that total long exposure represents approximately 130% of a Fund's net assets; and (ii) simultaneously establish short positions in other securities so that total short exposure represents approximately 30% of such Fund's net assets. Each Business Day, for each Long/Short Fund and 130/30 Fund, the Adviser will provide full portfolio transparency on the Fund's publicly available Web site ("Web site") by making available the Fund's Portfolio Holdings before the commencement of trading of Shares on the Listing Exchange (defined below).[5] The information provided on the Web site will be formatted to be reader-friendly.

8. A Fund will utilize either a replication or representative sampling strategy to track its Underlying Index. A Fund using a replication strategy will invest in the Component Securities of its Underlying Index in the same approximate proportions as in such Underlying Index. A Fund using a representative sampling strategy will hold some, but not necessarily all of the Component Securities of its Underlying Index. Applicants state that a Fund using a representative sampling strategy will not be expected to track the performance of its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying Index with the same weighting as the Underlying Index. Applicants expect that each Fund will have an annual tracking error relative to the performance of its Underlying Index of less than 5%.

9. Each Fund will be entitled to use its Underlying Index pursuant to either a licensing agreement with the entity that compiles, creates, sponsors or maintains the Underlying Index (each, an "Index Provider") or a sub-licensing arrangement with the Adviser, which will have a licensing agreement with such Index Provider.[6] A "Self-Indexing Fund" is a Fund for which an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor (each, an "Affiliated Index Provider") will serve as the Index Provider. In the case of Self-Indexing Funds, an Affiliated Index Provider will create a proprietary, rules-based methodology to create Underlying Indexes (each an "Affiliated Index").[7] Except with respect to the Self-Indexing Funds, no Index Provider is or will be an Affiliated Person, or a Second-Tier Affiliate, of a Trust or a Fund, of the Adviser, of any Sub-Adviser to or promoter of a Fund, or of the Distributor.

10. Applicants recognize that Self-Indexing Funds could raise concerns regarding the ability of the Affiliated Index Provider to manipulate the Underlying Index to the benefit or detriment of the Self-Indexing Fund. Applicants further recognize the potential for conflicts that may arise with respect to the personal trading activity of personnel of the Affiliated Index Provider who have knowledge of changes to an Underlying Index prior to the time that information is publicly disseminated.

11. Applicants propose that each Self-Indexing Fund will post on its Web site, on each day the Fund is open, including

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[1] All existing entities that intend to rely on the requested order have been named as applicants. Any other existing or future entity that subsequently relies on the order will comply with the terms and conditions of the order. A Fund of Funds (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] A "to-be-announced transaction" or "TBA Transaction" is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to settlement date.

[3] Depositary receipts representing foreign securities ("Depositary Receipts") include American Depositary Receipts and Global Depositary Receipts. The Funds may invest in Depositary Receipts representing foreign securities in which they seek to invest. Depositary Receipts are typically issued by a financial institution (a "depositary bank") and evidence ownership interests in a security or a pool of securities that have been deposited with the depositary bank. A Fund will not invest in any Depositary Receipts that the Adviser or any Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated person of a Fund, the Adviser or any Sub-Adviser will serve as the depositary bank for any Depositary Receipts held by a Fund.

[4] Underlying Indexes that include both long and short positions in securities are referred to as "Long/Short Indexes."

[5] Under accounting procedures followed by each Fund, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day (T + 1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

[6] The licenses for the Self-Indexing Funds will specifically state that the Affiliated Index Provider (as defined below), or in case of a sub-licensing agreement, the Adviser, must provide the use of the Affiliated Indexes (as defined below) and related intellectual property at no cost to the Trust and the Self-Indexing Funds.

[7] The Affiliated Indexes may be made available to registered investment companies, as well as separately managed accounts of institutional investors and privately offered funds that are not deemed to be "investment companies" in reliance on section 3(c)(1) or 3(c)(7) of the Act for which the Adviser acts as adviser or subadviser ("Affiliated Accounts") as well as other such registered investment companies, separately managed accounts and privately offered funds for which it does not act either as adviser or subadviser ("Unaffiliated Accounts"). The Affiliated Accounts and the Unaffiliated Accounts, like the Funds, would seek to track the performance of one or more Underlying Index(es) by investing in the constituents of such Underlying Indexes or a representative sample of such constitutents of the Underlying Index. Consistent with the relief requested from section 17(a), the Affiliated Accounts will not engage in Creation Unit transactions with a Fund.

any day when it satisfies redemption requests as required by Section 22(e) of the Act (a "Business Day"), before commencement of trading of Shares on the Listing Exchange, the identities and quantities of the Portfolio Holdings that will form the basis for the Fund's calculation of its NAV at the end of the Business Day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will also provide an additional mechanism for addressing any such potential conflicts of interest.

12. In addition, Applicants do not believe the potential for conflicts of interest raised by the Adviser's use of the Underlying Indexes in connection with the management of the Self Indexing Funds and the Affiliated Accounts will be substantially different from the potential conflicts presented by an adviser managing two or more registered funds. Both the Act and the Advisers Act contain various protections to address conflicts of interest where an adviser is managing two or more registered funds and these protections will also help address these conflicts with respect to the Self-Indexing Funds.[8]

13. Each Adviser and any Sub-Adviser has adopted or will adopt, pursuant to Rule 206(4)–7 under the Advisers Act, written policies and procedures designed to prevent violations of the Advisers Act and the rules thereunder. These include policies and procedures designed to minimize potential conflicts of interest among the Self-Indexing Funds and the Affiliated Accounts, such as cross trading policies, as well as those designed to ensure the equitable allocation of portfolio transactions and brokerage commissions. In addition, the Initial Adviser will adopt policies and procedures as required under section 204A of the Advisers Act, which are reasonably designed in light of the nature of its business to prevent the misuse, in violation of the Advisers Act or the Exchange Act or the rules thereunder, of material non-public information by the ETS Securities or an associated person ("Inside Information Policy"). Any other Adviser or Sub-Adviser will be required to adopt and maintain a similar Inside Information Policy. In accordance with the Code of Ethics[9] and Inside Information Policy of the Adviser and any Sub-Adviser, personnel of those entities with knowledge about the composition of the Portfolio Deposit[10] will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public. In addition, an Index Provider will not provide any information relating to changes to an Underlying Index's methodology for the inclusion of component securities, the inclusion or exclusion of specific component securities, or methodology for the calculation or the return of component securities, in advance of a public announcement of such changes by the Index Provider.[11] The Adviser will also include under Item 10.C of Part 2 of its Form ADV a discussion of its relationship to any Affiliated Index Provider and any material conflicts of interest resulting therefrom, regardless of whether the Affiliated Index Provider is a type of affiliate specified in Item 10.

14. To the extent the Self-Indexing Funds transact with an Affiliated Person of the Adviser or Sub-Adviser, such transactions will comply with the Act, the rules thereunder and the terms and conditions of the requested order. In this regard, each Self-Indexing Fund's board of directors or trustees ("Board") will periodically review the Self-Indexing Fund's use of an Affiliated Index Provider. Subject to the approval of the Self-Indexing Fund's Board, the Adviser, Affiliated Persons of the Adviser ("Adviser Affiliates") and Affiliated Persons of any Sub-Adviser ("Sub-Adviser Affiliates") may be authorized to provide custody, fund accounting and administration and transfer agency services to the Self-Indexing Funds. Any services provided by the Adviser, Adviser Affiliates, Sub-Adviser and Sub-Adviser Affiliates will be performed in accordance with the provisions of the Act, the rules under the Act and any relevant guidelines from the staff of the Commission.

15. The Shares of each Fund will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments").[12] On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, unless the Fund is Rebalancing (as defined below). In addition, the Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions)[13] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[14] (c) TBA Transactions, short positions, derivatives and other positions that cannot be transferred in kind[15] will be excluded from the Deposit Instruments and the Redemption Instruments;[16] (d) to the extent the Fund determines, on a given Business Day, to use a representative sampling of the Fund's portfolio;[17] or (e) for temporary periods, to effect changes in the Fund's portfolio as a result of the rebalancing of its

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[8] *See, e.g.,* Rule 17j–1 under the Act and Section 204A under the Advisers Act and Rules 204A–1 and 206(4)–7 under the Advisers Act.

[9] The Adviser has also adopted or will adopt a code of ethics pursuant to Rule 17j–1 under the Act and Rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in Rule 17j–1) from engaging in any conduct prohibited in Rule 17j–1 ("Code of Ethics").

[10] The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the "Portfolio Deposit."

[11] In the event that an Adviser or Sub-Adviser serves as the Affiliated Index Provider for a Self-Indexing Fund, the terms "Affiliated Index Provider" or "Index Provider," with respect to that Self-Indexing Fund, will be limited to the employees of the applicable Adviser or Sub-Adviser that are responsible for creating, compiling and maintaining the relevant Underlying Index.

[12] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act"). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the Funds will comply with the conditions of rule 144A.

[13] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for the Business Day.

[14] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[15] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[16] Because these instruments will be excluded from the Deposit Instruments and the Redemption Instruments, their value will be reflected in the determination of the Cash Amount (as defined below).

[17] A Fund may only use sampling for this purpose if the sample: (i) Is designed to generate performance that is highly correlated to the performance of the Fund's portfolio; (ii) consists entirely of instruments that are already included in the Fund's portfolio; and (iii) is the same for all Authorized Participants on a given Business Day.

Underlying Index (any such change, a "Rebalancing"). If there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Deposit Instruments or Redemption Instruments exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Cash Amount").

16. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount; (b) if, on a given Business Day, the Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, the Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash;[18] (d) if, on a given Business Day, the Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC (defined below); or (ii) in the case of Foreign Funds holding non-U.S. investments, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if the Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Foreign Fund holding non-U.S. investments would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[19]

17. Creation Units will consist of specified large aggregations of Shares (*e.g.,* 25,000 Shares) as determined by the Adviser, and it is expected that the initial price of a Creation Unit will range from $1 million to $10 million. All orders to purchase Creation Units must be placed with the Distributor by or through an "Authorized Participant" which is either (1) a "Participating Party," *i.e.,* a Broker or other participant in the Continuous Net Settlement System of the NSCC, a clearing agency registered with the Commission, or (2) a participant in The Depository Trust Company ("DTC") ("DTC Participant"), which, in either case, has signed a participant agreement with the Distributor. The Distributor will be responsible for transmitting the orders to the Funds and will furnish to those placing such orders confirmation that the orders have been accepted, but applicants state that the Distributor may reject any order which is not submitted in proper form.

18. Each Business Day, before the open of trading on the Exchange on which Shares are primarily listed ("Listing Exchange"), each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Deposit Instruments and the Redemption Instruments, as well as the estimated Cash Amount (if any), for that day. The list of Deposit Instruments and Redemption Instruments will apply until a new list is announced on the following Business Day, and there will be no intra-day changes to the list except to correct errors in the published list. Each Listing Exchange will disseminate, every 15 seconds during regular Exchange trading hours, through the facilities of the Consolidated Tape Association, an amount for each Fund stated on a per individual Share basis representing the sum of (i) the estimated Cash Amount and (ii) the current value of the Deposit Instruments.

19. Transaction expenses, including operational processing and brokerage costs, will be incurred by a Fund when investors purchase or redeem Creation Units in-kind and such costs have the potential to dilute the interests of the Fund's existing shareholders. Each Fund will impose purchase or redemption transaction fees ("Transaction Fees") in connection with effecting such purchases or redemptions of Creation Units. In all cases, such Transaction Fees will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities. Since the Transaction Fees are intended to defray the transaction expenses as well as to prevent possible shareholder dilution resulting from the purchase or redemption of Creation Units, the Transaction Fees will be borne only by such purchasers or redeemers.[20] The Distributor will be responsible for delivering the Fund's prospectus to those persons acquiring Shares in Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the applicable Fund to implement the delivery of its Shares.

20. Shares of each Fund will be listed and traded individually on an Exchange. It is expected that one or more member firms of an Exchange will be designated to act as a market maker (each, a "Market Maker") and maintain a market for Shares trading on the Exchange. Prices of Shares trading on an Exchange will be based on the current bid/offer market. Transactions involving the sale of Shares on an Exchange will be subject to customary brokerage commissions and charges.

21. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Market Makers, acting in their roles to provide a fair and orderly secondary market for the Shares, may from time to time find it appropriate to purchase or redeem Creation Units. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[21] The price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material

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[18] In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis (whether for a given day or a given order), the key consideration will be the benefit that would accrue to the Fund and its investors. For instance, in bond transactions, the Adviser may be able to obtain better execution than Share purchasers because of the Adviser's size, experience and potentially stronger relationships in the fixed income markets. Purchases of Creation Units either on an all cash basis or in-kind are expected to be neutral to the Funds from a tax perspective. In contrast, cash redemptions typically require selling portfolio holdings, which may result in adverse tax consequences for the remaining Fund shareholders that would not occur with an in-kind redemption. As a result, tax consideration may warrant in-kind redemptions.

[19] A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[20] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing one or more of the requisite Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Instruments.

[21] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or the DTC Participants.

discount or premium in relation to their NAV.

22. Shares will not be individually redeemable, and owners of Shares may acquire those Shares from the Fund, or tender such Shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed through an Authorized Participant. A redeeming investor will pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Units.

23. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or a "mutual fund." Instead, each such Fund will be marketed as an "ETF." All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on an Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and will disclose that the owners of Shares may acquire those Shares from the Fund or tender such Shares for redemption to the Fund in Creation Units only. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Funds to register as open-end management investment companies and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units and redeem Creation Units from each Fund. Applicants further state that because Creation Units may always be purchased and redeemed at NAV, the price of Shares on the secondary market should not vary materially from NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve a Fund as a party and will not result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the price at which Shares trade will be disciplined by arbitrage opportunities created by the option continually to purchase or redeem Shares in Creation Units, which should help prevent Shares from trading at a material discount or premium in relation to their NAV.

Section 22(e)

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not only on the settlement cycle of the United States market, but also on current delivery cycles in local markets for underlying foreign securities held by a Foreign Fund. Applicants state that the delivery cycles currently practicable for transferring Redemption Instruments to redeeming investors, coupled with local market holiday schedules, may require a delivery process of up to fifteen (15) calendar days.[22] Accordingly, with respect to Foreign

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[22] Applicants note that settlement in certain countries, including Russia, has extended to fifteen calendar days in the past.

Funds only, applicants hereby request relief under section 6(c) from the requirement imposed by section 22(e) to allow Foreign Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption.[23]

8. Applicants believe that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants propose that allowing redemption payments for Creation Units of a Foreign Fund to be made within fourteen calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants suggest that a redemption payment occurring within fourteen calendar days following a redemption request would adequately afford investor protection.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1)

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from knowingly selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request an exemption to permit registered management investment companies and unit investment trusts ("UITs") that are not advised or sponsored by the Adviser, and not part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act as the Funds (such management investment companies are referred to as "Investing Management Companies," such UITs are referred to as "Investing Trusts," and Investing Management Companies and Investing Trusts are collectively referred to as "Funds of Funds"), to acquire Shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any Broker registered under the Exchange Act, to sell Shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act.

12. Each Investing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Fund of Funds Adviser") and may be sub-advised by investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a "Fund of Funds Sub-Adviser"). Any investment adviser to an Investing Management Company will be registered under the Advisers Act. Each Investing Trust will be sponsored by a sponsor ("Sponsor").

13. Applicants submit that the proposed conditions to the requested relief adequately address the concerns underlying the limits in sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

14. Applicants believe that neither a Fund of Funds nor a Fund of Funds Affiliate would be able to exert undue influence over a Fund.[24] To limit the control that a Fund of Funds may have over a Fund, applicants propose a condition prohibiting a Fund of Funds Adviser or Sponsor, any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Fund of Funds Adviser or Sponsor ("Fund of Funds Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Fund of Funds Sub-Adviser, any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Fund of Funds Sub-Adviser or any person controlling, controlled by or under common control with the Fund of Funds Sub-Adviser ("Fund of Funds Sub-Advisory Group").

15. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Fund of Funds Adviser, Fund of Funds Sub-Adviser, employee or Sponsor of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, Fund of Funds Adviser or Fund of Funds Sub-Adviser, employee or Sponsor is an affiliated person (except that any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

16. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, under condition B.5., a Fund of Funds Adviser, or a Fund of Funds' trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by

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[23] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations Applicants may otherwise have under rule 15c6–1 under the Exchange Act requiring that most securities transactions be settled within three business days of the trade date.

[24] A "Fund of Funds Affiliate" is a Fund of Funds Adviser, Fund of Funds Sub-Adviser, Sponsor, promoter, and principal underwriter of a Fund of Funds, and any person controlling, controlled by, or under common control with any of those entities. A "Fund Affiliate" is an investment adviser, promoter, or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

the Fund of Funds Adviser, trustee or Sponsor or an affiliated person of the Fund of Funds Adviser, trustee or Sponsor, other than any advisory fees paid to the Fund of Funds Adviser, trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Fund of Funds in the Fund. Applicants state that any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[25]

17. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes. To ensure a Fund of Funds is aware of the terms and conditions of the requested order, the Fund of Funds will enter into an agreement with the Fund ("FOF Participation Agreement"). The FOF Participation Agreement will include an acknowledgement from the Fund of Funds that it may rely on the order only to invest in the Funds and not in any other investment company.

18. Applicants also note that a Fund may choose to reject a direct purchase of Shares in Creation Units by a Fund of Funds. To the extent that a Fund of Funds purchases Shares in the secondary market, a Fund would still retain its ability to reject any initial investment by a Fund of Funds in excess of the limits of section 12(d)(1)(A) by declining to enter into a FOF Participation Agreement with the Fund of Funds.

Sections 17(a)(1) and (2) of the Act

19. Sections 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and (c) any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and provides that a control relationship will be presumed where one person owns more than 25% of a company's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser or an entity controlling, controlled by or under common control with an Adviser (an "Affiliated Fund"). Any investor, including Market Makers, owning 5% or holding in excess of 25% of the Trust or such Funds, may be deemed affiliated persons of the Trust or such Funds. In addition, an investor could own 5% or more, or in excess of 25% of the outstanding shares of one or more Affiliated Funds making that investor a Second-Tier Affiliate of the Funds.

20. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act pursuant to sections 6(c) and 17(b) of the Act to permit persons that are Affiliated Persons of the Funds, or Second-Tier Affiliates of the Funds, solely by virtue of one or more of the following: (a) Holding 5% or more, or in excess of 25%, of the outstanding Shares of one or more Funds; (b) an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds, to effectuate purchases and redemptions "in-kind."

21. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making "in-kind" purchases or "in-kind" redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for "in-kind" purchases of Creation Units and the redemption procedures for "in-kind" redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions, regardless of size or number. There will be no discrimination between purchasers or redeemers. Deposit Instruments and Redemption Instruments for each Fund will be valued in the identical manner as those Portfolio Holdings currently held by such Fund and the valuation of the Deposit Instruments and Redemption Instruments will be made in an identical manner regardless of the identity of the purchaser or redeemer. Applicants do not believe that "in-kind" purchases and redemptions will result in abusive self-dealing or overreaching, but rather assert that such procedures will be implemented consistently with each Fund's objectives and with the general purposes of the Act. Applicants believe that "in-kind" purchases and redemptions will be made on terms reasonable to Applicants and any affiliated persons because they will be valued pursuant to verifiable objective standards. The method of valuing Portfolio Holdings held by a Fund is identical to that used for calculating "in-kind" purchase or redemption values and therefore creates no opportunity for affiliated persons or Second-Tier Affiliates of applicants to effect a transaction detrimental to the other holders of Shares of that Fund. Similarly, applicants submit that, by using the same standards for valuing Portfolio Holdings held by a Fund as are used for calculating "in-kind" redemptions or purchases, the Fund will ensure that its NAV will not be adversely affected by such securities transactions. Applicants also note that the ability to take deposits and make redemptions "in-kind" will help each Fund to track closely its Underlying Index and therefore aid in achieving the Fund's objectives.

22. Applicants also seek relief under sections 6(c) and 17(b) from section 17(a) to permit a Fund that is an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds to sell its Shares to and redeem its Shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[26] Applicants state that the terms of the transactions are fair and reasonable and do not involve overreaching. Applicants

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[25] Any references to NASD Conduct Rule 2830 include any successor or replacement FINRA rule to NASD Conduct Rule 2830.

[26] Although applicants believe that most Funds of Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund, a Fund of Funds might seek to transact in Creation Units directly with a Fund that is an affiliated person of a Fund of Funds. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between a Fund of Funds and a Fund, relief from Section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to a Fund of Funds and redemptions of those Shares. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

note that any consideration paid by a Fund of Funds for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund.[27] Applicants believe that any proposed transactions directly between the Funds and Funds of Funds will be consistent with the policies of each Fund of Funds. The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the investment restrictions of any such Fund of Funds and will be consistent with the investment policies set forth in the Fund of Funds' registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and are appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of index-based ETFs.

2. As long as a Fund operates in reliance on the requested order, the Shares of such Fund will be listed on an Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Fund and tender those Shares for redemption to a Fund in Creation Units only.

4. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or the midpoint of the bid/ask spread at the time of the calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

5. Each Self-Indexing Fund, Long/Short Fund and 130/30 Fund will post on the Web site on each Business Day, before commencement of trading of Shares on the Exchange, the Fund's Portfolio Holdings.

6. No Adviser or any Sub-Adviser to a Self-Indexing Fund, directly or indirectly, will cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Self-Indexing Fund) to acquire any Deposit Instrument for the Self-Indexing Fund through a transaction in which the Self-Indexing Fund could not engage directly.

B. Section 12(d)(1) Relief

1. The members of a Fund of Funds' Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Fund of Funds' Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Fund of Funds' Advisory Group or the Fund of Funds' Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Fund of Funds' Sub-Advisory Group with respect to a Fund for which the Fund of Funds' Sub-Adviser or a person controlling, controlled by or under common control with the Fund of Funds' Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in a Fund to influence the terms of any services or transactions between the Fund of Funds or Fund of Funds Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Fund of Funds Adviser and Fund of Funds Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or a Fund of Funds Affiliate from a Fund or Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of a Fund exceeds the limits in section 12(d)(1)(A)(i) of the Act, the Board of the Fund, including a majority of the directors or trustees who are not "interested persons" within the meaning of Section 2(a)(19) of the Act ("non-interested Board members"), will determine that any consideration paid by the Fund to the Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, as applicable, will waive fees otherwise payable to it by the Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, or an affiliated person of the Fund of Funds Adviser, or trustee or Sponsor of the Investing Trust, other than any advisory fees paid to the Fund of Funds Adviser, or trustee or Sponsor of an Investing Trust, or its affiliated person by the Fund, in connection with the investment by the Fund of Funds in the Fund. Any Fund of Funds Sub-Adviser will waive fees otherwise payable to the Fund of Funds Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Fund of Funds Sub-Adviser, or an affiliated person of the Fund of Funds Sub-Adviser, other than any advisory fees paid to the Fund of Funds Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Fund of Funds Sub-Adviser. In the event that the Fund of Funds Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Fund of Funds or Fund of Funds Affiliate (except to the extent it

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[27] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by the Fund of Funds of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to a Fund of Funds, may be prohibited by Section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

7. The Board of a Fund, including a majority of the non-interested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), a Fund of Funds and the applicable Trust will execute a FOF Participation Agreement stating, without limitation, that their respective boards of directors or trustees and their investment advisers, or trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be fully recorded in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent the Fund acquires securities of another investment company pursuant to exemptive relief from the Commission permitting the Fund to acquire securities of one or more investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–08935 Filed 4–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77601; File No. SR–BatsBZX–2016–07]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Certificate of Incorporation of the Exchange's Ultimate Parent Company, Bats Global Markets, Inc.

April 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the certificate of incorporation of the Exchange's ultimate parent company, Bats Global Markets, Inc. (the "Corporation").

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 16, 2015, the Corporation, the ultimate parent entity of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation (the "New Certificate of Incorporation"). The Exchange previously received Commission approval of certain substantive amendments to the certificate of incorporation of the Corporation that comprise changes included in the New Certificate of Incorporation.[5] Since that date, the Corporation has determined it to be necessary to further amend its certificate of incorporation to achieve the final, pre-IPO version of the New Certificate of Incorporation. The additional amendments will be achieved through the filing with the State of Delaware of a certificate of amendment to the New Certificate of Incorporation. The additional amendments are described in further detail below.

The Exchange, on behalf of the Corporation, proposes changes to the New Certificate of Incorporation in connection with a forward stock split, pursuant to which each share of common stock of the Corporation outstanding or held in treasury immediately prior to the completion of the IPO would automatically and without action on the part of the holders thereof be subdivided into 2.91 shares of common stock (the "Stock Split").[6] Accordingly, the number of authorized shares of the Corporation, both in the aggregate and as set forth by class, as codified in paragraph (a)(i) of Article Fourth of the New Certificate of Incorporation, will be adjusted. The Corporation also plans to adjust the preferred stock of the Corporation consistent with the Stock Split. The par value of the Corporation's common stock will remain $0.01 per share.

The purpose of this rule filing is to permit the Corporation, the ultimate parent company of the Exchange, to adopt an amendment to the New Certificate of Incorporation, as described in this proposal. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and bylaws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by Bats Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation, and the governance of the Exchange will continue under its existing structure.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains, without modification, the existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is making certain administrative and structural changes to the New Certificate of Incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the ownership of the Corporation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition. As described above, the proposed rule change is simply to make certain administrative and structural changes to the New Certificate of Incorporation. These changes do not impact the governance of the Exchange nor do they modify the ownership of the Corporation.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Corporation's IPO may occur in the near future, and the changes described in this notice are a critical component of such IPO. The Exchange states that waiver of the operative delay will allow the Corporation to promptly move forward with the IPO without delay. The Commission notes that the Exchange represents that there are no changes to the provisions of the New Certificate of Incorporation that impact the ownership or governance of the Exchange, and that instead, the amendments reflect administrative and structural amendments to the New Certificate of Incorporation. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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[5] *See* Securities Exchange Act Release No. 77464 (March 29, 2016), 81 FR 19252 (April 1, 2016) (SR–BATS–2016–010; SR–BYX–2016–02; SR–EDGX–2016–04; SR–EDGA–2016–01).

[6] Common stock consists of voting common stock and non-voting common stock of the Corporation.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2016–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–07 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08939 Filed 4–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77608; File No. SR–BatsEDGA–2016–05]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Certificate of Incorporation of the Exchange's Ultimate Parent Company, Bats Global Markets, Inc.

April 13, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the certificate of incorporation of the Exchange's ultimate parent company, Bats Global Markets, Inc. (the "Corporation").

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 16, 2015, the Corporation, the ultimate parent entity of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation (the "New Certificate of Incorporation"). The Exchange previously received Commission approval of certain substantive amendments to the certificate of incorporation of the Corporation that comprise changes included in the New Certificate of Incorporation.[5] Since that date, the Corporation has determined it to be necessary to further amend its certificate of incorporation to achieve the final, pre-IPO version of the New

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[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 77464 (March 29, 2016), 81 FR 19252 (April 1, 2016) (SR–BATS–2016–010; SR–BYX–2016–02; SR–EDGX–2016–04; SR–EDGA–2016–01).

Certificate of Incorporation. The additional amendments will be achieved through the filing with the State of Delaware of a certificate of amendment to the New Certificate of Incorporation. The additional amendments are described in further detail below.

The Exchange, on behalf of the Corporation, proposes changes to the New Certificate of Incorporation in connection with a forward stock split, pursuant to which each share of common stock of the Corporation outstanding or held in treasury immediately prior to the completion of the IPO would automatically and without action on the part of the holders thereof be subdivided into 2.91 shares of common stock (the "Stock Split").[6] Accordingly, the number of authorized shares of the Corporation, both in the aggregate and as set forth by class, as codified in paragraph (a)(i) of Article Fourth of the New Certificate of Incorporation, will be adjusted. The Corporation also plans to adjust the preferred stock of the Corporation consistent with the Stock Split. The par value of the Corporation's common stock will remain $0.01 per share.

The purpose of this rule filing is to permit the Corporation, the ultimate parent company of the Exchange, to adopt an amendment to the New Certificate of Incorporation, as described in this proposal. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and bylaws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by Bats Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation, and the governance of the Exchange will continue under its existing structure.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposal is consistent with Section 6(b)(1) of the Act, because it retains, without modification, the existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is making certain administrative and structural changes to the New Certificate of Incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the ownership of the Corporation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition. As described above, the proposed rule change is simply to make certain administrative and structural changes to the New Certificate of Incorporation. These changes do not impact the governance of the Exchange nor do they modify the ownership of the Corporation.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Corporation's IPO may occur in the near future, and the changes described in this notice are a critical component of such IPO. The Exchange states that waiver of the operative delay will allow the Corporation to promptly move forward with the IPO without delay. The Commission notes that the Exchange represents that there are no changes to the provisions of the New Certificate of Incorporation that impact the ownership or governance of the Exchange, and that instead, the amendments reflect administrative and structural amendments to the New Certificate of Incorporation. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[6] Common stock consists of voting common stock and non-voting common stock of the Corporation.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGA–2016–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGA–2016–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2016–05 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08944 Filed 4–18–16; 8:45 am]

BILLING CODE 8011–01–P

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77603; File No. SR–NYSE–2016–28]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 72 Relating to Setting Interest

April 13, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 29, 2016, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 72 relating to setting interest. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 72 relating to setting interest to provide that interest that establishes a new Exchange best bid or offer ("BBO") would be considered setting interest even if a Limit Order designated Add Liquidity Only ("ALO") or sell short order during a Short Sale Period, as defined in Rule 440B(d), is re-priced and displayed at the same price as such interest that became the Exchange BBO.

Background

Under Rule 72(a)(ii), a bid or offer, including pegging interest, is considered the "setting interest" when it is established as the only displayable bid or offer made at a particular price and is the only displayable interest when such price is or becomes the Exchange BBO. Setting interest is entitled to priority for allocation of executions at that price, as provided for under Rule 72. If there is no setting interest, all interest is allocated on parity pursuant to Rule 72(c).[4]

In 2008, when the Exchange added the current form of Rule 72, current paragraph (a)(ii)(G) of the rule provided that if, at the time non-pegging interest becomes the Exchange BBO, an e-Quote is pegging to such non-pegging interest, all such interest was considered to be entered simultaneously and, therefore, no interest was considered the setting interest.[5] Because the Exchange believed that permitting pegging e-Quotes to eliminate the priority to which a non-pegging e-Quote might otherwise be entitled could disincentivize aggressive displayed quoting, the Exchange amended Rule 72(a)(ii)(G) to provide that non-pegging interest that becomes the Exchange BBO will be considered the setting interest even if an e-Quote is pegging to such non-pegging interest.[6] The Exchange's goal in providing priority to setting interest was to create an incentive for participants to display aggressive prices. The Exchange amended Rule 72(a)(ii)(G) in 2011 because it believed a participant may be reluctant to enter such displayed interest if a non-displayed pegging e-Quote could deny priority to such displayed interest.[7] Because pegging interest cannot peg to other pegging interest, the current rule specifies that non-pegging interest would retain priority if pegging interest is pegging to such non-pegging interest.

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Rule 72(c)(v).

[5] *See* Securities Exchange Act Release Nos. 58845 (Oct. 24, 2008), 73 FR 64379 (Oct. 29, 2008) (Approval Order) and 58184 (July 17, 2008), 73 FR 42853, (July 23, 2008) (Notice) (SR–NYSE–2008–46). *See also* Rule 70 (defining e-Quotes and d-Quotes).

[6] *See* Securities Exchange Act Release No. 65889 (Dec. 5, 2011), 76 FR 77040 (Dec. 9, 2011) (SR–NYSE–2011–60) (Notice of filing and immediate effectiveness of proposed rule change amended Rule 72).

[7] Because the Exchange does not publicly identify interest as pegging interest that is eligible to re-price based on changes to the PBBO, a participant seeking to set the Exchange BBO would be unaware that one or more pegging interest could join it at the Exchange BBO.

Proposed Rule Change

The Exchange believes there are additional circumstances when orders that are re-priced due to an external pricing change may similarly disincentivize aggressive displayed quoting by permitting such re-priced interest to eliminate the setting priority to which non-pegging interest may otherwise be entitled. For example, similar to pegging interest,[8] which is re-priced based on changes to the PBBO, a Limit Order to buy (sell) designated ALO may be re-priced and re-displayed based on changes to the best-priced sell (buy) interest at the Exchange.[9] Likewise, sell short orders that are re-priced to a Permitted Price during a Short Sale Period may be re-priced and re-displayed as the national best bid ("NBB") moves.[10] In both these scenarios, the participant sending aggressive display interest would be unaware that when it sets a new Exchange BBO, existing interest on the Exchange may be eligible to be re-priced to that new Exchange BBO price.

For the same reason as the Exchange filed to change Rule 72(a)(ii)(G) in 2011, the Exchange is proposing that Limit Orders designated ALO or sell short orders during a Short Sale Period that are re-priced and displayed based on changes to the best-priced sell (buy) interest or NBB would not deny priority to displayed interest that sets a new Exchange BBO. In addition, the Exchange proposes to amend Rule 72(a)(ii)(G) to provide that if interest becomes the Exchange BBO, it would retain its priority (*i.e.*, considered setting interest) even if pegging interest, Limit Orders designated ALO, or sell short orders during a Short Sale Period under Rule 440B(e) are re-priced and displayed at the same price as such interest. Finally, the Exchange proposes a non-substantive amendment to delete the cross-reference to Rule 13—Pegging Interest.

The Exchange also proposes to amend Rule 72(a)(ii)(G) to reflect that any interest, and not just "non-pegging" interest, is eligible to be setting interest even if other interest re-prices and is displayed at the new Exchange BBO. As provided for in Rule 13(f)(1)(B)(iii), pegging interest may establish an Exchange BBO, which would occur if pegging interest pegs to a PBBO that is more aggressively priced than the Exchange's current BBO. For example, if the PBB is higher than the Exchange BB and the Exchange receives pegging interest to buy with a limit price equal to or higher than such PBB price, the pegging interest would peg to the PBB and be displayed as a new Exchange BB. If there were no other interest when the pegging interest establishes the Exchange BBO, such pegging interest would be entitled to priority under Rule 72(a)(ii).[11] However, if more than one pegging interest is pegging to the PBBO and together they establish a new Exchange BBO, Rule 72(a)(ii) would not provide either pegging interest with priority. Current Rule 72(a)(ii)(G), which provides that "non-pegging interest" is considered setting interest if it becomes the Exchange BBO, even if pegging interest is pegging to such non-pegging interest, is consistent with Rule 72(a)(ii) because any such pegging interest would not be the only displayable interest.

As discussed above, the Exchange proposes to amend Rule 72(a)(ii)(G) to specify additional interest that could reprice without denying priority to interest that sets the Exchange BBO. As a result, such non-pegging interest could be repriced to join pegging interest that establishes the Exchange BBO and that otherwise would be entitled to be setting interest. The Exchange therefore proposes that if a single pegging interest establishes the BBO, it would be entitled to priority even if a Limit Order designated ALO or short sale order during a Short Sale Period is re-priced and displayed at that same price. In such scenario, the pegging interest would be the aggressively-priced interest that established the new Exchange BBO, and other interest that re-prices at that price would be the reactive orders. Accordingly, to address such scenario, the Exchange proposes to change the references in Rule 72(a)(ii)(G) from "non-pegging interest" to "interest."

Currently, in limited circumstances, Limit Orders designated ALO that are re-priced to a price other than its limit price to join interest that sets a new Exchange BBO do not deny priority to the interest that set the Exchange BBO.[12] Because of technology changes associated with implementing this rule change for all circumstances when Limit Orders designated ALO and sell short orders during a Short Sale Period reprice to join interest that sets a new Exchange BBO, the Exchange will announce by Trader Update the full implementation of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[13] in general, and furthers the objectives of section 6(b)(5),[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change meets these requirements because it would permit interest that sets a new Exchange BBO, including pegging interest that establishes an Exchange BBO, to be considered the setting interest and therefore retain priority, as provided for under Rule 72, over other interest that reacts and re-prices based on such interest setting a new Exchange BBO. The current rule already provides for non-pegging interest to retain priority if pegging interest pegs to such price, and the proposed rule change would afford similar treatment to any interest that establishes an Exchange BBO if pegging interest, Limit Orders designated ALO, or sell short orders during a Short Sale Period are re-priced and displayed at the same price as such interest. In addition, the proposed rule change is consistent with current rules in that it would allow for pegging interest that is entitled to be setting interest, as provided for in Rules 13(f)(1)(B)(iii) and 72(a)(ii), to retain priority if joined at that price by a Limit Order designated ALO or a sell short order during a Short

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[8] Pegging interest is defined in Rule 13(f)(1) as displayable or non-displayable interest to buy or sell at a price set to track the PBBO as the PBBO changes and must be an e-Quote or d-Quote.

[9] *See* Rule 13(e)(1) (defining ALO modifier) and Supplementary Material .10 to Rule 13 (defining the term "best-priced sell (buy) interest" to be the lowest-priced sell (highest-priced buy) interest against which incoming buy (sell) interest would be required to execute with and/or route to, including Exchange displayed offers, Non-Display Reserve Orders, Non-Display Reserve e-Quotes, odd-lot sized sell (buy) interest, and protected offers (bids) on away markets).

[10] *See* Rule 440B(e).

[11] Rule 72(a)(ii) explicitly includes pegging interest as being setting interest entitled to priority for allocation of executions, when such interest is established as the only displayable bid or offer made at a particular price and is the only displayable interest when such price is or becomes the Exchange BBO.

[12] *See* Trader Update dated February 17, 2016, available here: *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Trader_Update_Priority_Allocation.pdf.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

Sale Period. Accordingly, the proposal is designed to incentivize and reward aggressive displayed quoting by market participants, which would remove impediments to and perfect the mechanism of a free and open market and national market system by contributing to the market quality of the Exchange and the national market system in general. In this regard, the Exchange believes that this proposed change would have positive impact on the Exchange's market, on the Exchange's members, and on investors generally by promoting the display of aggressively-priced liquidity on a registered exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to promote the additional display of aggressively-priced liquidity on the Exchange by allowing interest that sets a new Exchange BBO to be considered setting interest even if other orders react and re-price based on such interest setting a new Exchange BBO.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtm*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2016–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–28 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08968 Filed 4–18–16; 8:45 am]

BILLING CODE 8011–01–P

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[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77610; File No. SR–NYSEArca–2016–55]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

April 13, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 1, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee

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[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Schedule"). The Exchange proposes to implement the fee change effective April 1, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify a criterion used for Lead Market Makers and Market Makers (collectively, "Market Makers") to qualify for the Super Tier level of the Monthly Posting Credit Tiers For Executions in Penny Pilot Issues and SPY (the "Posting Tiers"). The Exchange proposes to implement the fee change effective April 1, 2016.

Currently, Market Makers qualify for the Posting Tiers by achieving certain percentages of Total Industry Customer Equity and exchange traded fund ("ETF") option ADV ("ICADV").[4] The Posting Tiers include the Select, Super and Super II tiers and the volume requirements to achieve each are as follows:[5]

- Select Tier: A Market Maker achieve at least 0.25% of ICADV from Market Maker Posted Orders in both Penny Pilot and non-Penny Pilot issues;
- Super Tier: A Market Maker achieve either (i) at least 0.65% of ICADV from Market Maker Posted Orders in both Penny Pilot and non-Penny Pilot issues or (ii) at least 1.60% of ICADV from all orders in Penny Pilot Issues, all account types, with at least 0.80% of ICADV from Posted Orders in Penny Pilot Issues. As is the case today, in calculating the Super Tier, the Exchange will include the ADV of the Market Maker's affiliate(s); and
- Super Tier II: A Market Maker must achieve at least 1.60% of ICADV from Market Maker Posted Orders, and at least 0.90% of ICADV from Posted Orders from both Penny Pilot and non-Penny Pilot issues.[6]

The Exchange is proposing to modify one of the alternative criteria to qualify for the Super Tier, by reducing the percentages of ICADV from 0.65% of ICADV to 0.55% of ICADV from Market Maker Posted Orders in All Issues.[7] The Exchange believes this modification would encourage more Market Makers to achieve Super Tier, which in turn would improve the Posted Markets in all issues.

The Exchange is not proposing any changes to the amount of the Posting Credits for any of the tiers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change to the Super Tier is reasonable, equitable, and not unfairly discriminatory because it is designed to encourage Market Makers to achieve the Super Tier by posting volume on the Exchange, which additional liquidity would benefit all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The Exchange believes that modifying the Super Tier qualification is also not unfairly discriminatory as it applies to all Market Makers and may enable more Market Makers to meet the Super Tier on a more consistent basis because, as proposed, the threshold has been lowered slightly.

The Exchange also believes that the proposed change to the qualification criteria is reasonable equitable, and not unfairly discriminatory, as the Posting Credits are intended to encourage quoting at the National Best Bid and Offer ("NBBO") which in turn benefits both Customers and non-Customers by having narrower spreads available for execution.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would encourage competition, including by attracting a wider variety of business to the Exchange, which would make the Exchange a more competitive venue for, among other things, order execution and price discovery. Moreover, because the proposed change to the Super Tier continues to be based on the amount of business conducted on the Exchange, it would apply equally to similarly-situated Marker Makers and would not impose a disparate burden on competition either among or between classes of market participants.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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[4] The volume thresholds are based on Market Makers' volume transacted electronically as a percentage of total industry Customer equity and ETF options volumes as reported by the Options Clearing Corporation (the "OCC"). Total industry Customer equity and ETF option volume is comprised of those equity and ETF contracts that clear in the Customer account type at OCC and does not include contracts that clear in either the Firm or Market Maker account type at OCC or contracts overlying a security other than an equity or ETF security. *See* OCC Monthly Statistics Reports, *available here, http://www.theocc.com/webapps/monthly-volume-reports.*

[5] The Exchange notes that there is a posting credit of $0.28 associated with a Base Tier for which there is no volume requirement.

[6] The Commission notes that a Market Maker alternatively can qualify for Super Tier II by achieving at least 1.60% of ICADV from Customer and Professional Customer orders, with at least 1.20% of ICADV from Customer and Professional Customer Posted Orders in all Issues.

[7] *See supra* n. 4.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)[11] of the Act and subparagraph (f)(2) of Rule 19b–4[12] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–55. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–55, and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08946 Filed 4–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32070; 812–14450]

Newtek Business Services Corp.; Notice of Application

April 13, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 23(a), 23(b) and 63 of the Act; under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act; and under section 23(c)(3) of the Act for an exemption from section 23(c) of the Act.

SUMMARY OF THE APPLICATION: Newtek Business Services Corp. ("Applicant" or "Company") requests an order that would permit Applicant to (a) issue restricted shares of its common stock ("Restricted Stock") as part of the compensation package for certain participants in its 2015 Stock Incentive Plan (the "Plan"), (b) withhold shares of the Applicant's common stock or purchase shares of Applicant's common stock from participants to satisfy tax withholding obligations relating to the vesting of Restricted Stock or the exercise of options to purchase shares of Applicant's common stock ("Options"), and (c) permit participants to pay the exercise price of Options with shares of Applicant's common stock.

FILING DATES: The application was filed on April 28, 2015, and amended on October 28, 2015 and February 9, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 9, 2016, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicant, 212 West 35th Street, 2nd Floor, New York, New York 10001.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551–6819, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

APPLICANT'S REPRESENTATIONS: 1. Applicant is an internally managed closed-end investment company that has elected to be regulated as a business development company ("BDC") under the Act.[1] Applicant represents that it is a leading capital provider to small- and medium-sized businesses ("SMBs"). Applicant originates loans through a variety of sourcing channels and, through a rigorous underwriting process, seeks to achieve attractive risk-weighted returns. In addition, Applicant and its controlled portfolio companies provide comprehensive lending, payment processing, managed technology, personal and commercial insurance and payroll solutions to over 100,000 SMB accounts, across all industries. Shares of Applicant's common stock are traded on the Nasdaq Global Market under the symbol "NEWT." As of December 31, 2015, there were 14,503,927 shares of Applicant's common stock outstanding. As of that date, Applicant had 146 employees.

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

[1] Applicant was incorporated under the laws of the state of New York in June 1999 as Whitestone Holdings, Inc., completed an initial public offering in September 2000, and changed its name to Newtek Business Services, Inc. in November 2002. In November 2014, Newtek Business Services, Inc. merged with and into Newtek Business Services Corp. (the "Reincorporation Transaction") for the purpose of reincorporating in the state of Maryland.

2. Applicant currently has a five-member board of directors (the "Board") of whom three are not "interested persons" of Applicant within the meaning of section 2(a)(19) of the Act, and two are considered "interested persons" of Applicant.

3. Applicant believes that, because the market for superior investment professionals is highly competitive, Applicant's successful performance depends on its ability to offer fair compensation packages to its professionals that are competitive with those offered by other investment management businesses. Applicant states that the ability to offer equity-based compensation to its employees and non-employee directors ("Non-Employee Directors"), which both aligns employee and Board behavior with stockholder interests and provides a retention tool, is vital to Applicant's future growth and success.

4. Effective October 22, 2014, Applicant adopted the Newtek Business Services Corp. 2014 Stock Incentive Plan (the "2014 Plan"), which provides for the grant of Options. As of February 8, 2016, there were no Options outstanding. Applicant proposes to amend and restate the 2014 Plan by adopting the Plan, which will supersede the 2014 Plan, subject to the issuance of the requested order and stockholder approval. The Plan authorizes the issuance of Options and Restricted Stock to the Company's directors, including Non-Employee Directors, officers and other employees ("Participants").[2]

5. The Plan will authorize the issuance of Options and Restricted Stock subject to certain forfeiture restrictions. The restrictions may relate to continued employment or service on the Board, the performance of the Applicant pursuant to performance goals as set forth in the Plan, or other restrictions deemed by the Required Majority,[3] the Compensation, Corporate Governance, and Nominating Committee[4] or the Board from time to time to be appropriate and in the best interests of Applicant and its stockholders. Unless otherwise determined by the Board, a Participant granted Restricted Stock will have all of the rights of a stockholder including, without limitation, the right to vote Restricted Stock and the right to receive dividends, including deemed dividends, thereon, although such rights may be deferred during the restricted period applicable to these awards. Restricted Stock may not be transferred, pledged, hypothecated, margined, or otherwise encumbered by the Participant during the restricted period, except for disposition by will or intestacy. Except as otherwise determined by the Board under the Plan, upon termination of a Participant's employment or director relationship with the Company during the applicable restriction period, the Participant's Restricted Stock and any accrued and unpaid dividends that are then subject to restrictions shall generally be forfeited.[5]

6. A maximum of twenty percent (20%) of Applicant's total shares of common stock issued and outstanding (as of the Effective Date)[6] will be available for awards under the Plan. Under the Plan, no more than fifty percent (50%) of the shares of stock reserved for the grant of awards under the Plan may be Restricted Stock awards at any time during the term of the Plan. The maximum amount of Restricted Stock that may be outstanding at any particular time will be ten percent of the Applicant's voting securities.[7] Under the Plan, the aggregate number of shares of common stock deliverable pursuant to awards will not exceed 3,000,000.[8]

7. The Plan will be administered by the Compensation, Corporate Governance, and Nominating Committee with respect to Participants employed by Applicant and by the Board with respect to Non-Employee Directors, and the Board will have the responsibility to ensure that the Plan is operated in a manner that best serves the interests of Applicant and its stockholders. Restricted Stock will be awarded to certain employees, officers and directors, including Non-Employee Directors, from time to time as part of the employees', officers' or directors' compensation based on their actual or expected performance and value to the Company. All awards of Restricted Stock to employees and Non-Employee Directors will be approved by the Required Majority. Awards of Restricted Stock to Non-Employee Directors will be made on the schedule described below.

8. Under the Plan, Non-Employee Directors will each receive a grant of up to 2,000 shares of Restricted Stock at the beginning of each one-year term of service on the Board, for which forfeiture restrictions will lapse as to one-third of such shares each year for three years. Each grant of Restricted Stock to Non-Employee Directors will be made pursuant to this schedule and will not be changed without Commission approval.

9. The Plan provides that the Company is authorized to withhold stock (in whole or in part) from any award of Restricted Stock granted in satisfaction of a Participant's tax obligations. In addition, as discussed more fully in the application, the exercise of Options will result in the recipient being deemed to have received compensation in the amount by which the fair market value of the shares of the Company's common stock, determined as of the date of exercise, exceeds the

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Upon completion of the Reincorporation Transaction, Applicant elected to be regulated as a BDC. Section 2(a)(48) of the Act defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] Options will not be granted to Non-Employee Directors.

[3] Section 57(o) of the Act provides that the term "required majority," when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

[4] The "Compensation, Corporate Governance, and Nominating Committee" is composed of "non-employee directors" within the meaning of rule 16b–3, and "outside directors" within the meaning of section 162(m) of the Internal Revenue Code of 1986, as amended.

[5] If any shares subject to an award granted under the Plan are forfeited, cancelled, exchanged or surrendered or if an award terminates or expires without an issuance of shares, those shares will again be available for awards under the Plan.

[6] Effective Date is defined in section 2(p) of the Plan as the date on which the Plan is approved by Applicant's stockholders.

[7] For purposes of calculating compliance with this limit, the Company will count as Restricted Stock all shares of its common stock that are issued under the Plan less any shares that are forfeited back to the Company and cancelled as a result of forfeiture restrictions not lapsing.

[8] If the Company does not receive the order to issue Restricted Stock, all shares granted under the Plan may be subject to Options. All Option awards will be issued to employees in accordance with the statutory provisions set forth in section 61 and will not be granted to Non-Employee Directors.

exercise price. Accordingly, Applicant requests relief to withhold shares of its common stock or purchase shares of its common stock from Participants to satisfy tax withholding obligations related to the exercise of Options granted under the 2014 Plan or the vesting of Restricted Stock or exercise of Options that will be granted pursuant to the Plan. Applicant also requests an exemption to permit Participants to pay the exercise price of Options that were granted under the 2014 Plan or will be granted to them pursuant to the Plan with shares of the Company's common stock.

10. The Plan was approved on April 27, 2015 by the Compensation, Corporate Governance and Nominating Committee and the Board, including the Required Majority. The Plan will be submitted for approval to the Company's stockholders, and will become effective upon such approval, subject to and following receipt of the requested order.

Applicant's Legal Analysis

Sections 23(a) and (b), Section 63

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibiting a registered closed-end investment company from issuing securities for services or for property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the Plan.

2. Section 23(b) of the Act generally prohibits a registered closed-end investment company from selling any common stock of which it is the issuer at a price below its current net asset value. Section 63(2) of the Act makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the Plan would not meet the terms of section 63(2), sections 23(b) and 63 would prevent the issuance of Restricted Stock.

3. Section 6(c) provides, in part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicant requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a), 23(b) and 63 of the Act. Applicant states that the Plan would not violate the concerns underlying these sections, which include: (a) Preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (b) complication of the investment company's structure that made it difficult to determine the value of the company's shares; and (c) dilution of shareholders' equity in the investment company. Applicant asserts that the Plan does not raise concerns about preferential treatment of Applicant's insiders because the Plan is a bona fide compensation plan of the type that is common among corporations generally. In addition, section 61(a)(3)(B) of the Act permits a BDC to issue to its directors, officers, employees, and general partners warrants, options, and rights to purchase the BDC's voting securities pursuant to an executive compensation plan, subject to certain conditions. Applicant states that, for reasons that are unclear, section 61 and its legislative history do not address the issuance by a BDC of restricted stock as incentive compensation. Applicant believes, however, that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61. Applicant also asserts that the issuance of Restricted Stock would not become a means for insiders to obtain control of Applicant because the maximum amount of Restricted Stock that may be issued under the Plan at any one time will be ten percent of the outstanding shares of common stock of Applicant. Moreover, no single Participant will be granted more than 25% of the shares of stock reserved for issuance under the Plan.

5. Applicant further states that the Plan will not unduly complicate Applicant's capital structure because equity-based incentive compensation arrangements are widely used among corporations and commonly known to investors. Applicant notes that the Plan will be submitted for approval to the Company's stockholders. Applicant represents that the proxy materials submitted to Applicant's stockholders will contain a concise "plain English" description of the Plan and its potential dilutive effect. Applicant also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Securities Exchange Act of 1934. Applicant further notes that the Plan will be disclosed to investors in accordance with the requirements of the Form N–2 registration statement for closed-end investment companies and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. Applicant also will comply with the disclosure requirements for executive compensation plans applicable to BDCs.[9] Applicant thus concludes that the Plan will be adequately disclosed to investors and appropriately reflected in the market value of Applicant's shares.

6. Applicant acknowledges that awards granted under the Plan may have a dilutive effect on the stockholders' equity per share in Applicant, but believes that effect would be outweighed by the anticipated benefits of the Plan to Applicant and its stockholders. Moreover, based on the manner in which the issuance of Restricted Stock pursuant to the Plan will be administered, the Restricted Stock will be no more dilutive than if Applicant were to issue only Options to Participants who are employees, as is permitted by section 61(a)(3) of the Act. Applicant asserts that it needs the flexibility to provide the requested equity-based compensation in order to be able to compete effectively with other venture capital firms for talented professionals. These professionals, Applicant suggests, in turn are likely to increase Applicant's performance and stockholder value. Applicant also asserts that equity-based compensation would more closely align the interests of Applicant's employees and Non-Employee Directors with those of its stockholders. In addition, Applicant states that its stockholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plan by the Board.

Section 57(a)(4), Rule 17d–1

7. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) ("57(b) persons"), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d–1, made applicable to BDCs by section 57(i), proscribes participation in a "joint enterprise or other joint arrangement or

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[9] See Executive Compensation and Related Party Disclosure, Securities Act Release No. 8655 (Jan. 27, 2006) (proposed rule); Executive Compensation and Related Party Disclosure, Securities Act Release No. 8732A (Aug. 29, 2006) (final rule and proposed rule), as amended by Executive Compensation Disclosure, Securities Act Release No. 8756 (Dec. 22, 2006) (adopted as interim final rules with request for comments).

profit-sharing plan," which includes a stock option or purchase plan. Employees and directors of a BDC are 57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d–1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (a) whether the participation of the BDC in a joint enterprise is consistent with the policies and purposes of the Act and (b) the extent to which such participation is on a basis different from or less advantageous than that of other participants.

8. Applicant requests an order pursuant to sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act to permit Applicant to issue Restricted Stock under the Plan. Applicant acknowledges that its role is necessarily different from the other participants because the other participants are its directors and employees. It notes, however, that the Plan is in the interest of the Company's stockholders, because the Plan will help align the interests of Applicant's employees with those of its stockholders, which will encourage conduct on the part of those employees designed to produce a better return for Applicant's stockholders. Additionally, section 57(j)(1) of the Act expressly permits any director, officer or employee of a BDC to acquire warrants, options and rights to purchase voting securities of such BDC, and the securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan which meets the requirements of section 61(a)(3)(B) of the Act. Applicant submits that the issuance of Restricted Stock pursuant to the Plan poses no greater risk to stockholders than the issuances permitted by section 57(j)(1) of the Act.

Section 23(c)

9. Section 23(c) of the Act, which is made applicable to BDCs by section 63 of the Act, generally prohibits a BDC from purchasing any securities of which it is the issuer except in the open market pursuant to tenders, or under other circumstances as the Commission may permit to ensure that the purchases are made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant states that the withholding or purchase of shares of Restricted Stock and common stock in payment of applicable withholding tax obligations or of common stock in payment for the exercise price of a stock option might be deemed to be purchases by the Company of its own securities within the meaning of section 23(c) and therefore prohibited by the Act.

10. Section 23(c)(3) of the Act permits a BDC to purchase securities of which it is the issuer in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicant believes that the requested relief meets the standards of section 23(c)(3).

11. Applicant submits that these purchases will be made in a manner that does not unfairly discriminate against Applicant's stockholders because all purchases of Applicant's stock will be at the closing price of the common stock on the Nasdaq Global Market (or any primary exchange on which its shares of common stock may be traded in the future) on the relevant date (*i.e.,* the public market price on the date of grant of Restricted Stock and the date of grant of Options). Applicant submits that because all transactions with respect to the Plan will take place at the public market price for the Company's common stock, these transactions will not be significantly different than could be achieved by any stockholder selling in a market transaction. Applicant represents that no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving Applicant's shares.

12. Applicant represents that the withholding provisions in the Plan do not raise concerns about preferential treatment of Applicant's insiders because the Plan is a bona fide compensation plan of the type that is common among corporations generally. Furthermore, the vesting schedule is determined at the time of the initial grant of the Restricted Stock and the option exercise price is determined at the time of the initial grant of the Options. Applicant represents that all purchases may be made only as permitted by the Plan, which will be approved by the Company's stockholders prior to any application of the relief. Applicant believes that granting the requested relief would be consistent with the policies underlying the provisions of the Act permitting the use of equity compensation as well as prior exemptive relief granted by the Commission under section 23(c) of the Act.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The Plan will be authorized by Applicant's stockholders.

2. Each issuance of Restricted Stock to an officer, employee, or Non-Employee Director will be approved by the Required Majority of Applicant's directors on the basis that such grant is in the best interest of Applicant and its stockholders.

3. The amount of voting securities that would result from the exercise of all of Applicant's outstanding warrants, options and rights, together with any Restricted Stock issued and outstanding pursuant to the Plan, will not at the time of issuance of any warrant, option, right or share of Restricted Stock under the Plan, exceed 20 percent of Applicant's outstanding voting securities.

4. The amount of Restricted Stock issued and outstanding will not at the time of issuance of any shares of Restricted Stock exceed ten percent of Applicant's outstanding voting securities.

5. The Board will review the Plan at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the Plan could have on Applicant's earnings and net asset value per share, such review to take place prior to any decisions to grant Restricted Stock under the Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the issuance of Restricted Stock under the Plan will be in the best interest of Applicant and its stockholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–08934 Filed 4–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77612; File No. SR–BatsEDGX–2016–10]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Certificate of Incorporation of the Exchange's Ultimate Parent Company, Bats Global Markets, Inc.

April 13, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the certificate of incorporation of the Exchange's ultimate parent company, Bats Global Markets, Inc. (the "Corporation").

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 16, 2015, the Corporation, the ultimate parent entity of the Exchange, filed a registration statement on Form S–1 with the Commission seeking to register shares of common stock and to conduct an initial public offering of those shares, which will be listed for trading on the Exchange (the "IPO"). In connection with its IPO, the Corporation intends to amend and restate its certificate of incorporation (the "New Certificate of Incorporation"). The Exchange previously received Commission approval of certain substantive amendments to the certificate of incorporation of the Corporation that comprise changes included in the New Certificate of Incorporation.[5] Since that date, the Corporation has determined it to be necessary to further amend its certificate of incorporation to achieve the final, pre-IPO version of the New Certificate of Incorporation. The additional amendments will be achieved through the filing with the State of Delaware of a certificate of amendment to the New Certificate of Incorporation. The additional amendments are described in further detail below.

The Exchange, on behalf of the Corporation, proposes changes to the New Certificate of Incorporation in connection with a forward stock split, pursuant to which each share of common stock of the Corporation outstanding or held in treasury immediately prior to the completion of the IPO would automatically and without action on the part of the holders thereof be subdivided into 2.91 shares of common stock (the "Stock Split").[6] Accordingly, the number of authorized shares of the Corporation, both in the aggregate and as set forth by class, as codified in paragraph (a)(i) of Article Fourth of the New Certificate of Incorporation, will be adjusted. The Corporation also plans to adjust the preferred stock of the Corporation consistent with the Stock Split. The par value of the Corporation's common stock will remain $0.01 per share.

The purpose of this rule filing is to permit the Corporation, the ultimate parent company of the Exchange, to adopt an amendment to the New Certificate of Incorporation, as described in this proposal. The changes described herein relate to the certificate of incorporation of the Corporation only, not to the governance of the Exchange. The Exchange will continue to be governed by its existing certificate of incorporation and bylaws. The stock in, and voting power of, the Exchange will continue to be directly and solely held by Bats Global Markets Holdings, Inc., an intermediate holding company wholly-owned by the Corporation, and the governance of the Exchange will continue under its existing structure.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[7] In particular, the proposal is consistent with section 6(b)(1) of the Act, because it retains, without modification, the existing limitations on ownership and total voting power that currently exist and that are designed to prevent any stockholder from exercising undue control over the operation of the Exchange and to assure that the Exchange is able to carry out its regulatory obligations under the Act. Under the proposal, the Corporation is making certain administrative and structural changes to the New Certificate of Incorporation. These changes, however, do not impact the governance of the Exchange nor do they modify the ownership of the Corporation.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition. As described above, the proposed rule change is simply to make certain administrative and structural changes to the New Certificate of Incorporation. These changes do not impact the governance of the Exchange nor do they modify the ownership of the Corporation.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* Securities Exchange Act Release No. 77464 (March 29, 2016), 81 FR 19252 (April 1, 2016) (SR–BATS–2016–010; SR–BYX–2016–02; SR–EDGX–2016–04; SR–EDGA–2016–01).

[6] Common stock consists of voting common stock and non-voting common stock of the Corporation.

[7] 15 U.S.C. 78f(b).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[12] normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that the Corporation's IPO may occur in the near future, and the changes described in this notice are a critical component of such IPO. The Exchange states that waiver of the operative delay will allow the Corporation to promptly move forward with the IPO without delay. The Commission notes that the Exchange represents that there are no changes to the provisions of the New Certificate of Incorporation that impact the ownership or governance of the Exchange, and that instead, the amendments reflect administrative and structural amendments to the New Certificate of Incorporation. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[14] The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsEDGX–2016–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–10 and should be submitted on or before May 10, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–08947 Filed 4–18–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before May 19, 2016.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

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[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: The servicing agent agreement is executed by the borrower, and the certified development company as the loan servicing agent. The agreement is primarily used by the certified development company as the loan servicing agent and acknowledges the imposition of various fees allowed in SBA's 504 loan program.

Title: Servicing Agent Agreement.

Description of Respondents: Certified Development Companies.

Form Number: 1506.

Estimated Annual Responses: 6,151.

Estimated Annual Hour Burden: 6,151.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–09070 Filed 4–18–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, 44 U.S.C Chapter 35 requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before June 20, 2016.

ADDRESSES: Send all comments to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Loan Specialist, Office of Financial Assistance, *mary.frias@sba.gov,* 202–401–8234, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov;*

SUPPLEMENTARY INFORMATION: This information collection consists of SBA Form 2233 and SBA Form 2234, Parts A, B, and C. A statutory change on December 22, 2015 in the Consolidated Appropriations Act, 2016, made debt refinance a permanent part of the 504 loan program. Slight revisions to the currently approved forms are required to reinstate the debt refinance program requirements that were previously removed due to the expiration of the authority for that program in 2012.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Application for Section 504 Loan.

Description of Respondents: Small Business Lending Companies.

Form Number's: SBA Form 2233, 2234A, 2234B, 2234C.

Total Estimated Annual Responses: 20.

Total Estimated Annual Hour Burden: 30.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2016–09071 Filed 4–18–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Airport Property From Quitclaim Deed; North Perry Airport, Hollywood, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release approximately 0.07 acres of airport property at North Perry Airport, Hollywood, FL, from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and Broward County, FL, dated October 11, 1957. The release of property will allow Broward County to dispose of the property for other than aeronautical purposes. The property is located at the intersection of Pembroke Road (State Road 824) and Airport Drive South, Hollywood, Florida. The parcel is currently designated as non-aeronautical land use. The property will be released of its federal obligations in order for the FDOT to use the property for installation and maintenance of a traffic signal device and associated highway improvements. The fair market value of these parcels has been determined to be $53,900.

DATES: Comments are due on or before May 19, 2016.

ADDRESSES: Documents are available for review at Broward County Aviation Department, 2200 SW 45th Street, Suite 101, Dania Beach, Florida 33312; and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Marisol C. Elliott, Community Planner, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024. Documents reflecting the Sponsor's request are available for inspection by appointment only at the Broward County Aviation Department and by contacting the FAA at the address listed above.

FOR FURTHER INFORMATION CONTACT: Marisol C. Elliott, Community Planner, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

Issued in Orlando, Florida, on April 12, 2016.

Bart Vernace,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2016–09079 Filed 4–18–16; 8:45 a.m.]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0003]

Notice of Buy America Waiver for a Fall Arrest System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to the request of the Indianapolis Public Transportation Corporation (IPTC) for a Buy America non-availability waiver for the procurement of a Horizontal Lifeline Fall Protection Maintenance Tie Back System (System), the Federal Transit Administration (FTA) hereby waives its Buy America requirements, finding that the materials for which the waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality. This waiver is limited to a single procurement by IPTC for the System.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *Laura.Ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for IPTC for the procurement of a Horizontal Lifeline Fall Protection Maintenance Tie Back System under 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality," then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). "It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States." 49 CFR 661.7(c)(1).

IPTC is constructing a Downtown Transit Center (DTC) in Indianapolis, Indiana, that will serve as the hub for public transit. It will include a large indoor public waiting area and bus bays while serving pedestrians, cyclists, and bus riders. Per Occupational Safety and Health Administration (OSHA) regulations, IPTC is required to provide fall protection for employees performing maintenance on the new building. IPTC entered into a contract with Weddle Bros. Building Group (WBBG) in early September 2014 for the construction of the DTC. WBBG certified in good faith that it would comply with Buy America. As part of the project, IPTC issued an RFP for the complete design, supply, and installation of a fall protection maintenance tie-back system to safeguard personnel to include all cable, intermediate brackets, end terminations, and modifications of structural steel as required for supplementary support of stanchions, user equipment, and attachment to roof structure for a complete and working fall protection maintenance tie-back system.

Two firms, American Anchor and Pro-Bel Group, responded to the RFP, but did not certify compliance with the Buy America regulations. The cables and tensioning system are not manufactured domestically for Pro-Bel. The hands-free set ups are not manufactured domestically for American Anchor. IPTC submitted a waiver request based on non-availability under 49 CFR 661.7(c). FTA also conducted a scouting search for the fall arrest system through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). The scouting search did not identify a domestic manufacturer of a system that met IPTC's specifications.

On Tuesday March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing the Buy America waiver request (81 FR 15411), seeking comment from all interested parties, including potential vendors and suppliers. The comment period closed on March 29, 2016, and no comments were received.

Therefore, based on the information supplied in support of IPTC's request for a Buy America waiver for the System, including NIST's inability to locate a domestic manufacturer that currently produces a similar system and the lack of any comments, FTA hereby waives its Buy America requirements for the Horizontal Lifeline Fall Protection Maintenance Tie Back System on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement for the Horizontal Lifeline Fall Protection Maintenance Tie Back System by IPTC.

Issued on April 14, 2016.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–08990 Filed 4–18–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0006]

Notice of Buy America Waiver for Steel Excavator With a Continuous Wield Platform

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to the request of Metro North Railroad (MNR) for a Buy America non-availability waiver for the procurement of a steel excavator with a continuous wield platform (CWP), the Federal Transit Administration (FTA) hereby waives its Buy America requirements, finding that the materials for which the waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality. This waiver is limited to a single procurement by MNR for the CWP.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *laura.ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for MNR for the procurement of a steel excavator with a CWP, under 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). Under 49 U.S.C. 5323(j)(2)(C), rolling stock must contain more than 60 percent domestic content and final assembly must occur in the U.S. The CWP is subject to the rolling stock requirements. 49 CFR 661.3.

MNR operates commuter rail service spanning 787 track miles. MRN has a large length of track along the shore line and flooding along the line can occur regularly at many of these locations. The risk of flooding can be reduced by keeping drainage infrastructure clear of debris. Specialized equipment such as the CWP can quickly clear the right of way after storms enabling the resumption of passenger train service. After Hurricane Sandy, MNR leased a CWP, but given limited availability, as well as the higher cost of leasing, MNR believes that purchase of the CWP is necessary to ensure that it will be available to expedite service restoration and was provided funding to purchase such equipment from FTA through the emergency relief funds allocated for Superstorm Sandy.

A CWP is a support vehicle train which consists of several platforms suitable for holding/hauling and picking up or distributing a variety of materials, such as rocks, riprap, dirt or debris. The equipment is similar to an excavator which has an articulated arm, with the main difference being that it rides on rails and sits on a connected platform where it can dump or pick up material from in order to perform its functions. The main tasks for which the MNR uses the CWP is shoreline stabilization/ restoration and for removing debris from the right-of-way after storms.

MNR prepared and advertised a solicitation for the CWP on January 9, 2015. On February 5, 2015, BRRI, a Canadian firm, submitted a Certificate of Non-Compliance because the final assembly of the equipment would take place in Canada, although content of the material used would be 77% domestic origin.

MNR did extensive follow-up after receiving only one bid, including contacting seven vendors who did not submit bids and undertaking research to determine whether a CWP that met both the domestic content and the final assembly requirements of Buy America was available. One company that did not submit a bid stated that although it could meet the Buy America requirements, it was not interested in bidding on the project at this time. Accordingly, MNR requested a non-availability waiver of the Buy America requirements for final assembly pursuant to 49 U.S.C. 5323 (j)(2)(B).

On March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing the MNR Buy America waiver request (81 FR 15407), seeking comment from all interested parties, including potential vendors and suppliers. The comment period closed on March 29, 2016, and no comments were received. Based on the representations from MNR and the lack of any comments, FTA is granting a non-availability waiver for final assembly only of the CWP. This waiver is limited to the final assembly requirement for a single procurement of the CWP described above by MNR.

Issued on April 14, 2016.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–08978 Filed 4–18–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0002]

Notice of Buy America Waiver for a Radio Communications System

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to the request of the Kansas City Area Transportation Authority (KCATA) for a Buy America waiver for a DMR Tier III Trunked UHF Voice radio system that is compatible with its current system, the Federal Transit Administration (FTA) hereby waives its Buy America requirements finding that the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. This waiver is limited to a single procurement by KCATA for the DMR Tier III Trunked UHF Voice radio system.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *laura.ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for KCATA's procurement of a DMR Tier III Trunked UHF radio system under 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality," then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c).

KCATA provides public transportation services in the Kansas City, Missouri, metropolitan area, operating in seven counties. KCATA's current radio system was purchased in 2002 and fully activated in 2005. The radio system is analog and operates on two separate channels. It has limited growth capabilities, issues with "talk over," inaccessible voice connections, and escalating maintenance costs. KCATA is in the process of upgrading its radio system.

As part of its plan to upgrade the radio system, KCATA issued a Request for Proposals (RFP) on December 16, 2014, seeking a "turnkey project that includes a DMR Tier III Trunked UHF Voice radio system, full integration of the radio system with the Trapeze TransitMaster CAD/AVL system, and extended maintenance and support." KCATA only received one response to the RFP. Tait North America (Tait) expressed interest in the project but noted that it is headquartered in New Zealand and that a majority of the products supplied for the project would be assembled in New Zealand, making them non-compliant with Buy America.

Neither KCATA nor FTA has identified any companies in the United States that can meet the Buy America requirements for this project. FTA also conducted a scouting search for a U.S. manufacturer of a comparable radio system through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). The scouting search did not result in identifying any domestic manufacturers who could provide the equipment required by KCATA.

On Wednesday, March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** (81 FR 15410) requesting public comment on, among other topics, the merits of KCATA's waiver request and potential effects of granting the waiver. The public comment period closed on March 29, 2016. FTA received only once comment.

Selex ES, a subsidiary of an Italian company with its North America headquarters in Overland Park, Kansas, commented that although it did not submit a proposal to KCATA's RFP, it can supply a DMR Tier III Trunked Radio Systems similar to the system proposed by Tait, arguing that Selex ES is a "local" option for KCATA. Although Selex ES markets, designs, stages, ships, and services DMR Tier III Trunked Radio Systems and is based in Kansas, Selex ES does not provide a system that is compliant with FTA's Buy America requirement for manufactured goods. As noted above, Buy America applies to manufactured goods, not services. Additionally, Selex ES did not participate in the initial RFP offered by KCATA. If Selex ES had bid on KCATA's RFP it too would have needed a non-availability waiver of the Buy America requirements.

Therefore, based on the information supplied in support of KCATA's request for a Buy America waiver for the DMR Tier III Trunked UHF Voice radio system that is compatible with its current system, including NIST's inability to locate a domestic manufacturer that currently produces a similar system and that no other entity was able to establish that it makes a Buy America complaint system, FTA hereby waives its Buy America requirements for the DMR Tier III Trunked UHF Voice radio system on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement for the DMR Tier III Trunked UHF Voice radio system by KCATA.

Issued on April 14, 2016.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–08989 Filed 4–18–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0005]

Notice of Buy America Waiver for Special Trackwork Turnout Switch Components.

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to the request of the Detroit Transportation Corporation (DTC) for a Buy America non-availability waiver for the procurement of two special trackwork turnout switch components (switch), the Federal Transit Administration (FTA) hereby waives its Buy America requirements, finding that the materials for which the waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality. This waiver is limited to the procurement by DTC for the switch.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *Laura.Ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted a Buy America non-availability waiver for DTC for the procurement of the switch, under 49 U.S.C. 5323(j)(2)(B) and 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality," then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). "It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States." 49 CFR 661.7(c)(1).

DTC is the owner and operator of the Detroit People Mover, which is the largest municipal rail system in Michigan. It is a fully automated light rail system that operates twelve rail cars between thirteen passenger stations on an elevated single track in a 2.9 mile loop in Detroit's central business district. In March 2015, DTC solicited bids to procure special trackwork switch point for Turnout 3, which is located adjacent to the Maintenance Facility Building and provides access to the building. The special trackwork of concern was originally procured from Germany (by Krupp Stahl AG) and is of European standards, using AREMA 115RE rail throughout the turnout with special 60E1A1 (formerly Zu-160) track point section. The project includes replacing stock rails that connect the switch point section to the original running rails, as well as rubber pads; both the rails and pads will be sourced domestically. The waiver only applies to the switch component of the project.

DTC issued the first RFP in March 2015 to thirteen companies. DTC received no responses. It contacted all the companies, and reissued the RFP in May 2015 to six firms that expressed an interest in the project. From this RFP, DTC only received one proposal, from Delta Railroad Construction, Inc. (Delta). Delta, however, cannot comply with Buy America requirements because the only manufacturer of the switch is a German company. To change the manufacturer, Delta would need to re-engineer the switch and modify the "frog" section and guideway elements; this design would need to be certified. Delta would then need to locate a domestic source to manufacture the re-engineered switch. Upon installation, the proprietary software designer of the automated control train system would need to certify the switch's performance in order to ensure it could be safely used with the existing guideway switch machines.

On March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal Register** announcing the DTC Buy America waiver request (81 FR 15406), seeking comment from all interested parties, including potential vendors and suppliers. The comment period closed on March 29, 2016, and no comments were received.

Based on the representations of DTC and the lack of any comments, FTA is granting a non-availability waiver for the procurement of the switch described above, on the grounds that the manufactured product is not available in the U.S. This waiver is limited to a single procurement of the switch described above by DTC.

Issued on April 14, 2016.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–08988 Filed 4–18–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2016–0004]

Notice of Buy America Waiver for Ductless Mini-Split Air Conditioning Systems

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: In response to requests received from the Indianapolis Public Transportation Corporation (IPTC) for a Buy America non-availability waiver for the procurement of an inverter-driven ductless mini-split system air conditioner; the York Adams Transportation Authority (YATA) for ductless split system air conditioning units; the Key West Transit (KWT) for a ductless mini-split mechanical system for the City of Key West Public

Transportation Facility; and the Springfield Redevelopment Authority (SRA) for ductless mini-split air conditioners for the Union Station Regional Intermodal Transportation Center in Springfield, Massachusetts, the Federal Transit Administration (FTA) hereby waives its Buy America requirements, finding that the materials for which the waivers are requested are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality. This waiver is limited to the specific procurements identified herein.

DATES: This waiver is effective immediately.

FOR FURTHER INFORMATION CONTACT: Laura Ames, FTA Attorney-Advisor, at (202) 366–2743 or *Laura.Ames@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that FTA has granted non-availability Buy America waivers to IPTC, YATA, KWT, and SRA for the procurement of ductless split system air conditioning units 49 U.S.C. 5323(j)(2)(A); 49 CFR 661.7(c).

With certain exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless "the steel, iron, and manufactured goods used in the project are produced in the United States." 49 U.S.C. 5323(j)(1). A manufactured product is considered produced in the United States if: (1) All of the manufacturing processes for the product take place in the United States; and (2) all of the components of the product are of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents. 49 CFR 661.5(d). If, however, FTA determines that "the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality," then FTA may issue a non-availability waiver. 49 U.S.C. 5323(j)(2)(B); 49 CFR 661.7(c). "It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States." 49 CFR 661.7(c)(1).

By way of background, IPTC is constructing its Downtown Transit Center and the contractor and subcontractor hired for the project, Weddle Bros. Building Group, LLC and Commercial Air Inc., previously certified Buy America compliance. After awarding the contract, Commercial Air became aware that the inverter-driven ductless mini-split system air conditioner selected for the center, was non-compliant. Enviroair manufactures this air conditioning system in China, although certain equipment is stocked and shipped from Utica, New York. IPTC selected the Enviroair system, which will be installed in the transit center's information technology room, because it will keep the room constantly cool and is the only way to cool the room in the space provided. IPTC also hopes to receive Silver LEED certification for the transit center and the Enviroair system is critical for achieving this certification. IPTC identified six other ductless mini-split air condition system manufacturers, all of which are manufactured abroad.

YATA seeks to install multiple ductless split system air conditioning units in its Operations and Maintenance Facility. These units will regulate environmental conditions in areas with specific temperature and/or humidity requirements, such as in server rooms or elevator machine rooms, or in rooms where conventional ductwork is not possible. YATA's successful bidder certified Buy America compliance, although later learned that the units from ECR international-EMI–USA of Utica, New York, are in fact manufactured abroad. YATA identified one ductless split system unit that is manufactured in the U.S. by Modine, however, this unit has a larger capacity than YATA's project requirements for the Operations and Maintenance Facility. Use of this unit would result in constant compressor cycling and a limited lifespan. Moreover, YATA states that it cannot use a standard split system unit as an alternative to the ductless split system, because a standard system is incapable of treating ventilation air and the required ductwork cannot be installed in locations that need environmental control. Therefore, no domestic manufacturer exists that would satisfy YATA's project needs.

KWT is completing construction of its City of Key West Public Transportation Facility, which is a U.S. Green Building Council LEED project and includes many sustainable and efficient elements, including that of the HVAC system. According to KWT's waiver request, the HVAC system is Buy America-compliant, with the exception of the VRF mechanical system which will be placed in three of the electrical, mechanical, and server rooms in the new facility. KWT states that these rooms must be able to function separately from the main operations building. KWT also is building this facility to be LEED silver certified and the energy-efficient VRF system will help KWT attain this certification. The VRF system sought will also better accommodate spatial constraints since the new facility is surrounded by a landfill, school bus parking lot, and other construction projects. It is also located in a highly-trafficked area, which limits the footprint of the project. Unlike other HVAC systems, the ductless mini-split system will be able to fit into the available space.

KWT is installing a Carrier ductless mini-split system in the facility. Before selecting this system, KWT conducted extensive research and reached out to domestic manufacturers, however, KWT was unable to find a domestically manufactured mini-split air conditioning system. KWT states that it contacted the remaining America manufacturer of VRF HVAC systems and this manufacturer ceased production two years ago.

SRA is constructing the Union Station Regional Intermodal Transportation Center, which includes renovation of the existing Terminal Building and the construction of a six-story parking garage. SRA is seeking to procure nine ductless mini-split air conditioners for the construction project. Each building within the transportation center will have its own HVAC system. SRA states that it is necessary to install ductless mini-split air conditioners in each individual room in order to maintain environs in each room. The air conditioners will be independent of other heating and cooling systems and will be backed up by a generator. Initially, SRA's contractor believed that Trane's product was Buy America-compliant. Subsequently, however, Trane notified SRA that its product was mislabeled and is actually foreign-made. SRA also contacted 8 other companies who manufacture ductless mini-split air conditioners, although none of these companies manufacture the product domestically. As a result, SRA is seeking a non-availability waiver for the ductless mini-split air conditioners as there is no domestic manufacturer.

FTA also conducted a scouting search for ductless air conditioning systems through its Interagency Agreement with the U.S. Department of Commerce's National Institute of Standards and Technology (NIST). Although the scouting search identified two domestic manufacturers as potential matches for this opportunity, upon further investigation neither company currently produces a system that would meet the stated specifications.

On Tuesday, March 22, 2016, and in accordance with 49 U.S.C. 5323(j)(3)(A), FTA published a notice in the **Federal**

Register announcing the Buy America waiver request (81 FR 15409), seeking comment from all interested parties, including potential vendors and suppliers. The comment period closed on March 29, 2016, and no comments were received. Based on the representations from IPTC, YATA, KWT, and SRA, the lack of any comments, and the fact that the NIST supplier scouting search did not identify a domestically made air conditioner system, FTA is granting a non-availability waiver for the procurements of the ductless air conditioning systems described above on the grounds that the manufactured products are not available in the U.S. This waiver is limited to the specific procurements described in this waiver.

Issued on April 14, 2016.

Dana Nifosi,

Deputy Chief Counsel.

[FR Doc. 2016–08987 Filed 4–18–16; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2016–0035; Notice No. 2016–03]

Hazardous Materials: U.S. Designated Agents by Non-Resident Firework Manufacturers Guidance

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Guidance Notice.

SUMMARY: PHMSA is issuing this guidance clarifying that: (1) Firework manufacturers may have more than one U.S. Designated Agent provided they follow certain criteria; and (2) inclusion of electronic contact information can help reduce processing times for approval requests.

DATES: The policy clarification discussed in this document is effective April 19, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Paquet, Director, Approvals and Permits Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Correspondence with respect to this notice should be sent to: *FIREWORKS@dot.gov*, subject line—"U.S. Designated Agents Guidance" or respond to the listed address for Mr. Ryan Paquet.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this action, PHMSA's Office of Hazardous Materials Safety (OHMS) is issuing this Public Outreach Notice to clarify PHMSA's policy regarding the use of U.S. Designated Agents by non-resident firework manufacturers, clarifying the number of U.S. Designated Agents non-resident firework manufacturers may use.

II. Background

Pursuant to 49 CFR 173.56(b), a new explosive (firework) must be examined and assigned a recommended shipping description, division, and compatibility group by an examining agency, which is approved by PHMSA, unless the firework is manufactured to comply with the requirements specified in §§ 173.64 and 173.65. Applicant firework manufacturers that are not residents of the United States are required to designate an individual, a firm, or a domestic corporation that is a permanent resident of the United States to act as the non-resident applicant firework manufacturer's U.S. Designated Agent, in accordance with § 105.40.

III. Action

PHMSA is no longer restricting non-resident firework manufacturers to the use of one U.S. Designated Agent. Since PHMSA allows applicant firework manufacturers to have more than one U.S. Designated Agent, the following criteria will help PHMSA to ensure that it has the correct information regarding a non-resident applicant firework manufacturer's U.S. Designated Agent.

PHMSA is also clarifying in this Notice that, although not required under § 105.40, inclusion of electronic contact information (*i.e.*, email) allows for a more expedited processing of approvals. When PHMSA has only the physical address of the applicant or agent, the process of compiling and manually processing for mailing approvals can add as much as two weeks to the processing time.

Non-Resident Application Requests for Classification will be reviewed when:

The U.S. Designated Agent information listed on the application request matches the information on the U.S. Designated Agent letter enclosed with the request.

Non-Resident Application Requests for Classification may be rejected when:

The U.S. Designated Agent information listed on the application request does not match the information on the U.S. Designated Agent letter enclosed with the request.

The application request indicates that the applicant firework manufacturer has a U.S. Designated Agent, but does not include a U.S. Designated Agent letter.

Detailed information on the requirements for classification and approval of new fireworks is found in 49 CFR 173.56, 173.64, 173.65, the American Pyrotechnics Association's Standard 87–1, and on PHMSA's Web site at: *www.phmsa.dot.gov/hazmat.* Additional information is available by calling the Hazardous Materials Information Center at (800) 467–4922 or (202) 366–4488.

Issued in Washington, DC, on April 12, 2016, under authority delegated in 49 CFR Part 107.

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–09015 Filed 4–18–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2016–0007]

Office of the Assistant Secretary for Research and Technology (OST–R) Notice of Request for Clearance of a Revision of a Currently Approved Information Collection: National Census of Ferry Operators

AGENCY: Bureau of Transportation Statistics (BTS) Office of the Assistant Secretary for Research and Technology (OST–R), DOT.

ACTION: Notice

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for an information collection related to the nation's ferry operations. The information collected will be used to produce a descriptive database of existing ferry operations. A summary report of survey findings will also be published by BTS on the BTS Web page.

DATES: Comments must be submitted on or before May 19, 2016.

FOR FURTHER INFORMATION CONTACT: Janine L. McFadden, (202) 366–2468, NCFO Project Manager, BTS, OST–R, Department of Transportation, 1200 New Jersey Ave. SE., Room E34–411, Washington, DC 20590. Office hours are from 8:00 a.m. to 5:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Census of Ferry Operators (NCFO)

Type of Request: Approval modifications to an existing information collection.

Affected Public: There are approximately 260 ferry operators nationwide.

Abstract: The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 260 ferry operators to identify: (1) Existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions; and (4) potential for use of high speed ferry services and alternative-fueled ferry services. The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) Pub. L. 109–59, Section 1801(e)) required that the Secretary, acting through the BTS, shall establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful. MAP–21 legislation [Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141),] continued the BTS mandate to conduct the NCFO and also required that the Federal Highway Administration (FHWA) use the NCFO data to set the specific formula for allocating federal ferry funds. The funding allocations were based on a percentage of the number of passenger boardings, vehicle boardings, and route miles served.

BTS conducted the first Census of Ferry Operators in 2006. The Census was conducted again in 2008, 2010, 2014, and is scheduled for the spring 2016. These information collections were originally approved by OMB under Control Number 2139–0009. The recently enacted FAST Act legislation [Fixing America's Surface Transportation Act (Pub. L. 114–94, sec. 1112)] continues the BTS mandate to conduct the NCFO on a biennial basis, and extended the requirement that the Federal Highway Administration (FHWA) use the NCFO data to set the specific formula for allocating federal ferry funds based on a percentage of the number of passenger boardings, vehicle boardings, and route miles served. The overall length of the revised questionnaire for the 2018 NCFO will remain consistent with that of previous years.

The survey will be administered to the entire population of ferry operators (estimate 260 or less). The survey will request the respondents to provide information such as: the points served; the type of ownership; the number of passengers and vehicles carried in the past 12 months; vessel descriptions (including type of fuel), federal, state and local funding sources, and intermodal connectivity. All data collected in 2018 will be added to the existing NCFO database.

Data Confidentiality Provisions: The National Census of Ferry Operators may collect confidential business information. The confidentiality of these data will be protected under 49 CFR 7.29. In accordance with this regulation, only statistical and non-sensitive business information will be made available through publications and public use data files. The statistical public use data are intended to provide an aggregated source of information on ferry boat operations nationwide. Business sensitive information may be shared with FHWA to support FAST Act funding allocations.

Frequency: This survey will be updated every other year.

Estimated Average Burden per Response: The burden per respondent is estimated to be an average of 30 minutes. This average is based on an estimate of 20 minutes to answer new questions and an additional 10 minutes to review.

Estimated Total Annual Burden: The total annual burden (in the year that the survey is conducted) is estimated to be just under 130 hours (that is 30 minutes per respondent for 260 respondents equals 7,800 minutes).

Response to Comments: A 60 day notice requesting public comment was issued in the **Federal Register** on February 3, 2016. No comments were received.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, clarity and content of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: BTS Desk Officer.

Issued in Washington, DC on this 12th day of April, 2016.

Patricia Hu, Director,

Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2016–08998 Filed 4–18–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Privacy of Consumer Financial Information

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, "Privacy of Consumer Financial Information." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by May 19, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0216, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219.

For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0216, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Privacy of Consumer Financial Information.

OMB Control No.: 1557–0216.

Description:

The Gramm-Leach-Bliley Act (Act) (Pub. L. 106–102) requires this information collection. Regulation P (12 CFR part 1016), a regulation promulgated by the Consumer Financial Protection Board (CFPB), implements the Act's notice requirements and restrictions on a financial institution's ability to disclose nonpublic personal information about consumers to nonaffiliated third parties.

The information collection requirements in 12 CFR part 1016 are as follows:

§ 1016.4(a)—Disclosure (institution)—Initial privacy notice to consumers requirement—A national bank or Federal savings association must provide a clear and conspicuous notice to customers and consumers that accurately reflects its privacy policies and practices.

§ 1016.5(a)(1)—Disclosure (institution)—Annual privacy notice to customers requirement—A national bank or Federal savings association must provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship.

§ 1016.8—Disclosure (institution)—Revised privacy notices—Before a national bank or Federal savings association discloses any nonpublic personal information in a way that is inconsistent with the notices previously given to a consumer, the institution must provide the consumer with a clear and conspicuous revised notice of the institution's policies and procedures, provide the consumer with a new opt out notice, give the consumer a reasonable opportunity to opt out of the disclosure, and the consumer must not opt out.

§ 1016.7(a)—Disclosure (institution)—Form of opt out notice to consumers; opt out methods—Form of opt out notice—If a national bank or Federal savings association is required to provide an opt out notice under § 1016.10(a), it must provide to each of its consumers a clear and conspicuous notice that accurately explains the right to opt out under that section. The notice must state:

- That the national bank or Federal savings association discloses or reserves the right to disclose nonpublic personal information about its consumer to a nonaffiliated third party;
- That the consumer has the right to opt out of that disclosure; and
- A reasonable means by which the consumer may exercise the opt out right.

A national bank or Federal savings association provides a reasonable means to exercise an opt out right if it:

- Designates check-off boxes on the relevant forms with the opt out notice;
- Includes a reply form with the opt out notice;
- Provides electronic means to opt out; or
- Provides a toll-free number to opt out.

§§ 1016.10(a)(2) and 1016(c)—Consumers must take affirmative actions to exercise their rights to prevent financial institutions from sharing their information with nonaffiliated parties—

- Opt out—Consumers may direct that the national bank or Federal savings association not disclose nonpublic personal information about them to a nonaffiliated third party, other than permitted by §§ 1016.13–1016.15.
- Partial opt out—Consumer also may exercise partial opt out rights by selecting certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§§ 1016.7(h) and 1016(i)—Reporting (consumer)—Duration of right to opt out—Continuing right to opt out—A consumer may exercise the right to opt out at any time. A consumer's direction to opt out is effective until the consumer revokes it in writing or, if the consumer agrees, electronically. When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information collected during or related to that relationship.

Type of Review: Regular.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 2,706,750.

Estimated Total Burden Hours: 693,284 hours.[1]

The OCC published a notice for 60 days of comment regarding this collection on February 8, 2016, 81 FR 6595. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 13, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016–09043 Filed 4–18–16; 8:45 am]

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[1] On December 4, 2015, the FAST Act (Pub. L. 114–94, Section 75001) was enacted, which amended the Gramm-Leach-Bliley Act (15 U.S.C. 6803) to exempt financial institutions from issuing a mandatory annual privacy notice if there has been no change in the disclosures required to be included in the institution's privacy policy from those that were provided in the most recent prior privacy policy notice and the institutions is not sharing nonpublic personal information with nonaffiliated third parties except pursuant to the exceptions in the existing law. It is unclear how many institutions will avail themselves of this exemption and, therefore, we have used a conservative burden estimate that does not take into consideration the recent enactment of the FAST Act. We will continue to monitor these notices and adjust our burden estimate, as necessary.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Margin and Capital Requirements for Covered Swap Entities: Exemptions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "Margin and Capital Requirements for Covered Swap Entities: Exemptions."

DATES: Comments must be submitted on or before June 20, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0335, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

In connection with issuance of the interim final rule entitled "Margin and Capital Requirements for Covered Swap Entities," [1] OMB provided a six-month approval for this information collection. The OCC is proposing to extend OMB approval of the collection for the standard three years.

Title: Margin and Capital Requirements for Covered Swap Entities: Exemptions.

OMB Control No.: 1557–0335.

Description: The OCC issued an interim final rule required by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA).[2] Title III of TRIPRA, the "Business Risk Mitigation and Price Stabilization Act of 2015," amends the statutory provisions added by the Dodd-Frank Act relating to margin requirements for non-cleared swaps and non-cleared security-based swaps. Section 302 of TRIPRA amends sections 731 and 764 of the Dodd-Frank Act to provide that the initial and variation margin requirements do not apply to certain transactions with specified counterparties that qualify for an exemption or exception from clearing. Non-cleared swaps and non-cleared security-based swaps that are exempt under section 302 of TRIPRA will not be subject to the Agencies' [3] rules implementing margin requirements.[4] The effect of the interim final rule is to augment provisions of the final rule published by the Agencies in November 2015 [5] that allow swap entities to collect no initial or variation margin from certain "other counterparties" like commercial end-users with a provision that grants an exception from the margin requirements for certain swaps with these and certain additional counterparties.

The reporting requirements in the interim final rule are found in 12 CFR 45.1(d), which refers to other statutory provisions that set forth conditions for an exemption from clearing. Section 45.1(d)(1) provides an exemption for non-cleared swaps if one of the counterparties to the swap is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the Commodity Futures Trading Commission of how it generally meets its financial obligations associated with entering into non-cleared swaps. Section 45.1(d)(2) provides an exemption for security-based swaps if the counterparty notifies the Securities and Exchange Commission of how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden: 20,000.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

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[1] 80 FR 74915 (November 30, 2015).

[2] Public Law 114–1, 129 Stat. 3 (2015).

[3] The Agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency.

[4] The interim final rule is a companion rule to a final rule adopted to implement section 731 and 764 of the Dodd-Frank Act.

[5] The final rule was issued on November 30, 2015 (80 FR 74840).

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 13, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016–08936 Filed 4–18–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of eight individuals and one entity whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act), 21 U.S.C. §§ 1901–1908, 8 U.S.C. § 1182.

DATES: The designation by the Director of OFAC of the eight individuals and one entity identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on April 14, 2016.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Office of Foreign Assets Control, U.S. Department of the Treasury, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site at *http://www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on-demand service at (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act provides a statutory framework for the imposition of sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury, in consultation with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security, may designate and block the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On April 14, 2016, the Acting Director of OFAC designated the following eight individuals and one entity whose property and interests in property are blocked pursuant to section 805(b) of the Kingpin Act.

Individuals

1. BARRIOS HERNANDEZ, Mercedes (a.k.a. "LA MECHE"), Xochitepec, Morelos, Mexico; DOB 05 May 1971; POB Acapulco de Juarez, Guerrero, Mexico; citizen Mexico; Gender Female; R.F.C. BAHM710505Q91 (Mexico); C.U.R.P. BAHM710505MGRRRR07 (Mexico) (individual) [SDNTK] (Linked To: LAREDO DRUG TRAFFICKING ORGANIZATION). Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of the LAREDO DTO and/or Job LAREDO DON JUAN, and/or is directed by, or acting for or on behalf of, the LAREDO DTO and/or Job LAREDO DON JUAN, and therefore meets the statutory criteria for designation pursuant to section 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

2. GOMEZ VELAZQUEZ, Daniela (a.k.a. GOMEZ VELASQUEZ, Daniela), Cuernavaca, Morelos, Mexico; DOB 25 Nov 1989; POB Poza Rica de Hidalgo, Veracruz, Mexico; citizen Mexico; Gender Female; R.F.C. GOVD891125EK6 (Mexico); National ID No. 96088982044 (Mexico); alt. National ID No. 96098907692 (Mexico); C.U.R.P. GOVD891125MVZMLN04 (Mexico) (individual) [SDNTK] (Linked To: LAREDO DRUG TRAFFICKING ORGANIZATION). Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of the LAREDO DTO and/or Ismael LAREDO DONJUAN, and/or is directed by, or acting for or on behalf of, the LAREDO DTO and/or Ismael LAREDO DONJUAN, and therefore meets the statutory criteria for designation pursuant to section 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

3. LAREDO DON JUAN, Job (a.k.a. LAREDO DONJUAN, Job; a.k.a. LAREDO, Antonio; a.k.a. RODRIGUEZ, Antonio; a.k.a. "GORDO"), Cuernavaca, Morelos, Mexico; DOB 17 Mar 1968; POB San Miguel Totolapan, Guerrero, Mexico; citizen Mexico; Gender Male; R.F.C. LADJ6803175F6 (Mexico); alt. R.F.C. LADJ6803178D1 (Mexico); C.U.R.P. LADJ680317HGRRNB04 (Mexico) (individual) [SDNTK] (Linked To: LAREDO DRUG TRAFFICKING ORGANIZATION). Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of the LAREDO DTO, and/or is directed by, or acting for or on behalf of, the LAREDO DTO, and therefore meets the statutory criteria for designation pursuant to section 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

4. LAREDO ESTRADA, Andres, Mexico; DOB 01 Dec 1973; POB Tlapehuala, Guerrero, Mexico; citizen Mexico; Gender Male; R.F.C. LAEA731201TB0 (Mexico); National ID No. 15097300311 (Mexico); C.U.R.P. LAEA731201HGRRSN07 (Mexico) (individual) [SDNTK] (Linked To: LAREDO DRUG TRAFFICKING ORGANIZATION). Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of the LAREDO DTO and/or Job LAREDO DON JUAN, and/or is directed by, or acting for or on behalf of, the LAREDO DTO and/or Job LAREDO DON JUAN, and therefore meets the statutory criteria for designation pursuant to section 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

5. LAREDO DONJUAN, Ruben, Sn Francisco 471, Santa Ana Zicatecoyan, Tlatlaya, Estado de Mexico C.P. 51571, Mexico; DOB 02 Sep 1974; POB General Heliodoro Castillo, Guerrero, Mexico; citizen Mexico; Gender Male; R.F.C. LADR7409021W3 (Mexico); C.U.R.P. LADR740902HGRRNB14 (Mexico) (individual) [SDNTK] (Linked To: LAREDO DRUG TRAFFICKING ORGANIZATION). Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of the LAREDO DTO, and/or is directed by, or acting for or on behalf of, the LAREDO DTO, and therefore meets the statutory criteria for designation pursuant to section 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

6. LAREDO DONJUAN, Ismael (a.k.a. LAREDO DON JUAN, Ismael; a.k.a. LAREDO, Ismael), Cuernavaca, Morelos, Mexico; DOB 28 Aug 1983; POB Acapulco de Juarez, Guerrero, Mexico; citizen Mexico; Gender Male; R.F.C. LADI830828T92 (Mexico); C.U.R.P. LADI830828HGRRNS08 (Mexico) (individual) [SDNTK] (Linked To: LAREDO DRUG TRAFFICKING ORGANIZATION). Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of Job LAREDO DON JUAN and/or the LAREDO DTO, and/or is directed by, or acting for or on behalf of, Job LAREDO DON JUAN and/or the LAREDO DTO, and therefore meets the statutory criteria for designation pursuant to section 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

7. MARCELO BARRAGAN, Antonio (a.k.a. "EL RATON"), Mexico; DOB 17 Jan 1983; citizen Mexico; Gender Male; R.F.C. MABA830117NJ0 (Mexico) (individual) [SDNTK] (Linked To: LAREDO DRUG TRAFFICKING ORGANIZATION). Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of the LAREDO DTO and/or Job LAREDO DON JUAN, and/or is directed by, or acting for or on behalf of, the LAREDO DTO and/or Job LAREDO DON JUAN, and therefore meets the statutory criteria for designation pursuant to section 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

8. REYNA FELIX, Ismael, Mexico; DOB 18 Dec 1978; POB Baja California, Mexico; citizen Mexico; Gender Male; R.F.C. REFI781218BI4 (Mexico) (individual) [SDNTK] (Linked To: LAREDO DRUG TRAFFICKING ORGANIZATION). Designated for materially assisting in, or providing financial or technological support for or to, or providing services in support of, the international narcotics trafficking activities of the LAREDO DTO and/or Job LAREDO DON JUAN, and/or is directed by, or acting for or on behalf of, the LAREDO DTO and/or Job LAREDO DON JUAN, and therefore meets the statutory criteria for designation pursuant to section 805(b)(2) and/or (3) of the Kingpin Act, 21 U.S.C. 1904(b)(2) and/or (3).

Entity

1. LAREDO DRUG TRAFFICKING ORGANIZATION (a.k.a. LAREDO DTO), Mexico [SDNTK]. Designated for playing a significant role in international narcotics trafficking and therefore meets the statutory criteria for designation pursuant to section 805(b)(4) of the Kingpin Act, 21 U.S.C. 1904(b)(4).

Dated: April 14, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–08973 Filed 4–18–16; 8:45 am]

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Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 250 and 251

Requirements for the Distribution and Control of Donated Foods—The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

[FNS–2014–0040]

RIN 0584–AE29

Requirements for the Distribution and Control of Donated Foods—The Emergency Food Assistance Program: Implementation of the Agricultural Act of 2014

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: This rule revises and clarifies requirements to ensure that USDA donated foods are distributed, stored, and managed in the safest, most efficient, and cost-effective manner, at State and recipient agency levels. The rule also reduces administrative and reporting requirements for State distributing agencies, revises or clarifies regulatory provisions relating to accountability for donated foods, and rewrites much of the regulations in a more user-friendly, "plain language," format. Lastly, the rule revises and clarifies specific requirements to conform more closely to related requirements in corresponding regulations and current law.

DATES: This rule is effective June 20, 2016.

FOR FURTHER INFORMATION CONTACT: Dana Rasmussen, Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, 3101 Park Center Drive, Room 506, Alexandria, Virginia 22302, or by telephone (703) 305–2680.

SUPPLEMENTARY INFORMATION:

I. Background and Description of Comments Received
  A. Requirements for the Distribution and Control of Donated Foods
  B. Nondiscretionary Requirements Under the Agricultural Act of 2014, Section 4027
II. Analysis of Comments Received and Regulatory Revisions, 7 CFR Parts 250 and 251
III. Procedural Matters

I. Background and Description of Comments Received

A. Requirements for the Distribution and Control of Donated Foods

In a proposed rule published in the **Federal Register** on October 22, 2014 (79 FR 63224), the Department proposed to amend Food Distribution regulations at 7 CFR part 250 and 7 CFR part 251 to revise and clarify requirements to ensure that USDA donated foods are distributed, stored, and managed in the safest, most efficient, and cost-effective manner, at State and recipient agency levels. The rule proposed to further amend regulations to reduce administrative and reporting requirements for State distributing agencies, revise or clarify regulatory provisions relating to accountability for donated foods, and rewrite much of the regulations in a more user-friendly, "plain language," format. Lastly, FNS proposed to revise and clarify specific requirements to conform more closely to related requirements elsewhere in the Code of Federal Regulations.

FNS solicited comments through January 20, 2015 on the provisions of the proposed rulemaking. These comments are discussed below and are available for review at *www.regulations.gov*. To view the comments received, enter "FNS–2014–0040" in the search field on the main page of *www.regulations.gov*. Then click on "Search." Under "Document Type", select "Public Submission".

The Department received 19 written comments regarding the proposed provisions from four associations and advocacy groups, five State agencies, four recipient agencies, one consulting firm, and four individuals who did not identify with an organization.

Two comments were supportive of the rule as proposed, in its entirety. The majority of the comments were supportive, but recommended changes to add clarity and consistency to the language in the regulations. Some commenters requested leaving the regulations as they currently stand in certain sections without the proposed revisions. There was only one comment in opposition of the proposed rule as a whole.

Commenters in support of the proposed rule indicated they were in favor of the clarifying changes and the consolidation of requirements for all food distribution programs. They also supported measures in the proposed rule to reduce administrative and reporting burdens on State distributing agencies and to lower costs for school food authorities (SFAs) receiving donated foods.

Most commenters requested further clarification and guidance on the proposed rule and the provisions that are changing. Specifically, commenters requested clarification on:

- Whether certain sections of the proposed rule applied to USDA donated foods in child nutrition programs, household programs, or both;
- Food safety inspection requirements and responsibilities at the State distributing, subdistributing, and recipient agency levels;
- Substitution of donated foods with commercially available foods in child nutrition programs and how and when to determine the value of donated foods at processors;
- The roles and responsibilities of State distributing agencies versus subdistributing agencies, including which duties may be delegated to a subdistributing agency on behalf of the State distributing agency; and
- Requirements for recipient agencies which may not have agreements with a State distributing agency or subdistributing agency, and enforcement of such requirements as they relate to storage and inventory management and insurance.

Commenters provided that select, proposed requirements, such as keeping inventories of donated foods separate from other foods and purchasing insurance, are financially and/or administratively burdensome for some recipient agencies and difficult for State distributing agencies to enforce when hundreds of recipient agencies distribute food for a program.

Commenters also requested that USDA:

- Hold greater responsibility for conforming to scheduled delivery periods and specifying a timeline for the resolution of donated foods complaints and the replacement of out-of-condition foods; and
- Require all in-state processors to sign national processing agreements (NPAs) to lessen the administrative and/or financial burden on States and processors. For example, as proposed, in-state processors would be required to obtain an independent certified public accountant (CPA) audit, which could be cost-prohibitive, according to commenters.

There was only one comment in opposition to the new rule as a whole which stated in generic terms that reformatting and revising rules is unnecessary.

B. Nondiscretionary Requirements Under the Agricultural Act of 2014, Section 4027

FNS is also amending program regulations at 7 CFR part 251 to implement nondiscretionary provisions of the Agricultural Act of 2014 (Pub. L. 113–79, the 2014 Farm Bill) with regard to The Emergency Food Assistance Program (TEFAP) through this rulemaking. Current program regulations at 7 CFR part 251 provide for the provision of donated foods to State distributing agencies for distribution to needy individuals through TEFAP.

Prior to enactment of the 2014 Farm Bill on February 7, 2014, section 214 of the Emergency Food Assistance Act of 1983 (Pub. L. 98–8; 7 U.S.C. 612c note), permitted USDA to use funds authorized for the purchase of TEFAP food only in the fiscal year (FY) in which the funds were appropriated. Section 4027 of the 2014 Farm Bill amended Section 27(a) of the Food and Nutrition Act of 2008 (7 U.S.C. 2036(a)) to make food funds used by the Department to purchase TEFAP foods available for two FYs, and to allow State distributing agencies to carry over unexpended balances of food funding allocations for use in the immediately following FY.

State distributing agencies administering TEFAP routinely obligate over 95 percent of their available TEFAP food funding allocation in the FY in which it was appropriated. While FNS and TEFAP State distributing agencies work hard to ensure that states use all of their allocation of TEFAP foods each FY, order cancellations, price fluctuations, and other logistical challenges may result in a state having a small portion of its food funding allocation remaining at the end of the FY. These funds, which are lost to the program, often would be sufficient to purchase additional foods for program participants.

The 2014 Farm Bill amendments provide State distributing agencies administering TEFAP with the flexibility to access food fund balances allocated to them for use in TEFAP for two FYs in the event they are not able to fully use such food funds in the year they are allocated.

FY 2015 appropriations legislation included language allowing for carryover, thus permitting this provision to take effect in FY 2015. FNS issued a memorandum on August 14, 2014, implementing the amendment made by section 4027; the memorandum is available on the FNS Web site at *http://www.fns.usda.gov/sites/default/files/fdd/TEFAP_Farm_Bill_2014_Implementation_Memo_1.pdf*. Beginning with FY 2015-appropriated TEFAP food funds, State distributing agencies will be able to keep any remaining TEFAP food funding allocation at the end of a FY and place orders against it during the subsequent FY. However, TEFAP food funds remaining at the end of the FY immediately following the FY for which they were initially appropriated will no longer be available to USDA for TEFAP purposes. As a result, the TEFAP food funds will be unavailable for State distributing agencies to use in placing orders. For example, any State distributing agency's balance of its FY 2015 TEFAP food funds allocation will be available during FY 2015 and FY 2016. Those funds will expire at the end of FY 2016 and will not carry over into FY 2017. Thus, FNS advises State distributing agencies to continue to make every effort to use their TEFAP food allocations in the year they are provided by USDA.

II. Analysis of Comments Received and Regulatory Revisions, 7 CFR 250 and 251

This final rulemaking amends the regulations at 7 CFR parts 250 and 251 as follows:

7 CFR Part 250

A. Subpart A—General Purpose and Administration

The Department proposed to completely revise current subpart A of 7 CFR part 250 to more clearly present the general purpose and use of donated foods, the definitions applicable to 7 CFR part 250, the responsible administrative agencies in the distribution and control of donated foods at Federal and State levels, and civil rights requirements. Comments received on this subpart are outlined below.

1. Purpose and Use of Donated Foods, § 250.1

In § 250.1, we proposed to describe the purpose of donated foods, the general requirements for their use, and the legislative sanctions that apply in the event they are improperly used. The Department received one comment which supported the proposed changes in § 250.1(b) regarding the use of donated foods for demonstration purposes. No other comments were received. Therefore, the proposed provisions at § 250.1 are retained without change in this final rule.

2. Definitions, § 250.2

In § 250.2, we proposed to include the definitions applicable to 7 CFR part 250, which are included in current § 250.3. We proposed to remove and replace definitions that were outdated. We also proposed to add new definitions applicable to our programs, and to streamline and clarify current definitions.

The proposed revision of the definition of "Distributing agency" would clarify the current definition by indicating that it is a State agency selected by the appropriate authorities in the State to distribute donated foods in the State, in accordance with 7 CFR part 250 and other Federal regulations, as applicable. One commenter requested a revision to the proposed definition because we infer the commenter believed the proposed language would allow State distributing agencies to single source one recipient or "local" agency to operate The Emergency Food Assistance Program (TEFAP) in the entire state, in every locale. Federal regulations at 7 CFR part 251 set forth TEFAP-specific requirements, including those requirements specific to the State selection of recipient agencies. State distributing agencies are responsible for the administration of TEFAP at the state level, and have the discretion to select eligible recipient agencies that can meet program requirements. Thus, FNS is not revising the definition in this regard; however, we are clarifying in § 250.2 of this final rule that the distributing agency may also be referred to as the State distributing agency.

The Department proposed to revise the definition of "Recipient agencies" to clarify their function in providing assistance directly to needy persons. Two commenters expressed concern about this definition, as child nutrition programs, for example, provide nutrition to all eligible children. Thus, in this final rule, the Department is revising the term "needy" to "eligible" wherever it appears, and replacing the definition of "Needy persons" with "Eligible persons."

We proposed to define "Distribution charge" as the cumulative charge imposed by distributing agencies on school food authorities to help meet the costs of storing and distributing donated foods, and administrative costs related to such activities. One commenter requested a revision to this definition to include the word "state" to distinguish state distribution charges from commercial ones. In the final rule revised definition of "Distributing agency," we clarify that State distributing agencies are agencies of the State. No additional modification or clarification of the definition of "Distribution charge" is needed as a result. The proposed provision is retained without change in this final rule.

One commenter expressed concern about the definition of "Distributor" in current § 250.2, adding that commercial distributors responsible for distributing direct delivery USDA foods neither sell nor bill for the product other than charging handling fees subject to the contract. To clarify in this final rule, the definition of "Distributor" is amended to state that a commercial food purveyor or handler who is independent of a processor and charges and bills for the handling of donated foods, and/or sells and bills for the end products delivered to recipient agencies.

Another commenter requested clarification on the "Sections" referenced throughout the proposed rule. Proposed § 250.2 contains definitions of each of the referenced "Sections" and the laws with which they are associated. These proposed definitions are being retained without change in this final rule.

One commenter requested clarification on the definition of "Subdistributing agencies." The commenter argued that in some cases, private cooperative-led SFAs and Commodity Supplemental Food Program (CSFP) agencies perform what may be considered activities of the State distributing agency and should therefore be considered subdistributors. Proposed § 250.2, Definitions, proposed to define a subdistributing agency as a State agency, a public agency, or a nonprofit organization selected by the distributing agency to perform one or more activities required of the distributing agency in this part, in accordance with a written agreement between the parties. A subdistributing agency may also be a recipient agency. In some cases, the private cooperative's duties most closely resemble those of recipient agencies or SFAs, as they are performing duties on behalf of SFAs and not the State. In CSFP, larger recipient or "local" agencies may manage similar duties for smaller, sub-contracted entities and would not be considered subdistributing agencies. Thus, the proposed provision is retained without change in this final rule.

Additionally, we are removing the definitions of "7 CFR part 3016" and "7 CFR part 3019", and the proposed definition of "7 CFR part 3052". The Office of Management and Budget (OMB) issued new guidance at 2 CFR part 200 titled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). OMB's Uniform Guidance replaces 7 CFR parts 3015, 3016, 3019, 3052, and cost principles addressed in 2 CFR parts 220 (A–21), 225 (A–87), and 230 (A–122). The USDA regulations implementing OMB's Uniform Guidance are located at 2 CFR parts 400, 415, 416, and 418. Resultantly, we are adding definitions of "2 CFR part 200" and "USDA implementing regulations" in this final rule.

We are also revising the definitions of "Disaster" and "National per-meal value" to include the complete statutory references to which these definitions apply. We are revising the definition of "Disaster" to include reference to Section 412 or 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179–5180) (the Act). The proposed definition only referenced the Act generally, rather than the specific sections of the Act to which this definition applies. In addition, we are revising the definition of "National per-meal value" to include the statutory references for both the National School Lunch Program (NSLP) and the Child and Adult Care Food Program (CACFP). Sections 6(c) and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c) and 1766(h)(1)(B)) establish the national per-meal value for each reimbursable meal served in NSLP and CACFP. These complete statutory references are reflected in this final rulemaking.

In this final rule, we are updating terminology used in reference to the Nutrition Services Incentive Program (NSIP). We are removing the definition of "AoA" and replacing it with "ACL" in the new definition and wherever the term appears. ACL, or the Administration for Community Living, is now the Department of Health and Human Services' (DHHS) administering agency for NSIP. We are also replacing the definition of "State Agency on Aging" with "State Unit on Aging", as this is the updated terminology used by DHHS, and replacing this term wherever it appears. Additionally, we are updating the definition of "Elderly nutrition project" to state that it is a recipient agency selected by the State Unit on Aging to receive assistance in NSIP, which may include donated food assistance. Lastly, the definition of "Section 311" is also being updated to include use of the term "State Unit on Aging", rather than "State Agency on Aging."

Based on general comments received requesting further clarity, we are also revising the definitions of "Contract value of the donated foods" and "Substitution" to clarify current requirements. The revision to "Contract value of the donated foods" streamlines and clarifies the current definition, and removes references which are no longer applicable. The current definition of "Substitution" uses the term "commodity," which we are replacing with "donated foods" for consistency with revised terminology in this final rule. Also, the current definition of "Substitution" references cheddar cheese and nonfat dry milk, which are outdated. The Commodity Credit Corporation inventory of nonfat dry milk has been depleted and is no longer available for donation to FNS for reprocessing and distribution within FNS programs. Also, we will handle all substitutions that do not meet the required specifications through future policy making. Thus, we are removing references to these products in the definition.

3. Administration at the Federal Level, § 250.3

In § 250.3, we proposed to include the actions that may be undertaken by FNS, as the Federal administering agency for USDA food assistance programs, in ensuring the effective distribution and control of donated foods. No comments were received on these proposed changes. Thus, the proposed provision is retained without change in this final rule.

4. Administration at the State Level, § 250.4

In § 250.4, we proposed to include the responsibilities of the State distributing agency in administering the distribution of donated foods at the State level. We also proposed to provide clarification on the relationship between State distributing agencies and subdistributing agencies, and between State distributing agencies and recipient agencies. Many of the comments were supportive, asked for further clarification, or requested modification of the proposed changes to more effectively maintain program integrity. Thus, many of the proposed revisions at § 250.4 are retained in this final rule, with minor changes detailed as follows.

In § 250.4(a), we proposed to require the State distributing agency to ensure compliance with requirements in 7 CFR part 250, and in other Federal regulations referenced in this part. Specifically, we proposed to remove the provision, in current § 250.2(c), that the State distributing agency must provide adequate personnel to administer the program, as the need to comply with requirements for effective administration would necessitate the employment of adequate personnel to do so. Two commenters were concerned about the removal of this provision in current § 250.2(c), as this would no longer ensure consistent and effective administration, training, and service to recipient agencies in all states. We agree with the commenters' recommendation, and are adding language to promote consistency with prior regulatory requirements. This will serve to underscore the need for effective administration at the State level.

In § 250.4(b), we proposed to clarify State distributing agency responsibilities and the allowance to delegate select duties to a subdistributing agency. Three commenters requested clarification on these duties. In proposed § 250.2, a subdistributing agency would be defined in part as a State agency, a public agency, or a nonprofit organization selected by the distributing agency to perform one or more activities required of the distributing agency in this part, in accordance with a written agreement between the parties. The State distributing agency may not assign its overall responsibility for donated food distribution and control to a subdistributing agency or to any other organization, and may not delegate its responsibility to ensure compliance with the performance standards in § 250.22, per proposed § 250.4(b). For example, applicable requirements which State distributing agencies would not be able to delegate to a subdistributing agency include, but are not limited to, conducting reviews of subdistributing and recipient agencies in CSFP, TEFAP, and the Food Distribution Program on Indian Reservations (FDPIR), and storage facilities at the State distributing agency and subdistributing agency levels; selecting recipient agencies; initiating and pursuing claims for donated food losses; and meeting the basic performance standards included in proposed § 250.22 in the ordering, distribution, processing, if applicable, and control of donated foods. Consistent with current and proposed requirements, though the State distributing agency may enter into an agreement with a subdistributing agency to handle the distribution and control of donated foods, the State distributing agency still has the overarching responsibility for program administration and integrity. We do not intend to change current or proposed requirements in this regard.

In § 250.4(c), we proposed to clarify the relationship between State distributing agencies and recipient agencies. We received several comments supporting the proposed amendments. One commenter agreed with the proposed revision to current § 250.11(b) that only State distributing agencies in household programs must consider past performance in selecting recipient agencies to receive donated foods. Another commenter agreed with the proposal to remove current durational requirements for agreements between State distributing agencies and recipient agencies/subdistributing agencies to allow State distributing agencies to determine the duration that will best meet the needs of the program. An additional commenter also supported these proposed revisions but requested allowing State distributing agencies to make such agreements permanent. We are modifying language from the proposed regulations to allow for permanent agreements, which may be amended at the initiation of State distributing agencies.

Another commenter solicited clarification as to which TEFAP recipient agencies must enter into written agreements with the State distributing agency. TEFAP regulations at § 251.2(c)(2) require State distributing agencies to enter into a written agreement with eligible recipient agencies and subdistributing agencies to which they plan to distribute donated foods and/or administrative funds. State distributing agencies must ensure that eligible recipient agencies and subdistributing agencies in turn enter into a written agreement with other eligible recipient agencies to which they plan to further distribute donated foods and/or administrative funds. Therefore, the State distributing agency only needs to enter into a written agreement with those eligible recipient agencies and subdistributing agencies to which they distribute food and/or administrative funds directly. The proposed changes would not contradict this requirement, nor would they require State distributing agencies to be the entity that enters into written agreements with all eligible recipient agencies that receive donated foods through TEFAP. Therefore, we are not changing the proposed requirements in this regard.

One commenter demonstrated concern that eliminating the requirement for periodic re-competition of agreements between State distributing agencies and subdistributing agencies could discourage State distributing agencies from ensuring that current agreements with TEFAP emergency feeding organizations (EFOs) continue to work effectively. The commenter references multiple EFOs which are likely not subdistributing agencies, but rather recipient agencies. Specific requirements regarding the selection of EFOs are outlined in TEFAP regulations at 7 CFR part 251. Under these requirements, State distributing agencies have discretion in determining how they select recipient agencies in TEFAP. Thus, the proposed provisions are retained without change in this final rule.

In § 250.4(d), we proposed to clarify that procurement requirements now contained in 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR part 400 and part 416, are applicable to distributing and recipient agencies in obtaining such services. No comments were received on these proposed changes. Thus, the proposed revisions are retained without change in this final rule.

5. Civil Rights, § 250.5

In § 250.5, we proposed to include civil rights requirements in accordance with current § 250.21. No comments were received on these proposed changes. However, we are making a minor, non-substantive revision for clarity in this final rule.

B. Subpart B—Delivery, Distribution, and Control of Donated Foods

The Department proposed to completely revise current Subpart B of 7 CFR part 250 to more clearly present the specific requirements in the ordering and delivery of donated foods, the distribution of donated foods to recipient agencies, and the control of donated foods at the State distributing agency and recipient agency levels. Comments received on this subpart are outlined below.

1. Availability and Ordering of Donated Foods, § 250.10

In § 250.10(a), we proposed to require the State distributing agency to utilize a request-driven ordering system which must provide recipient agencies the opportunity to provide input at least annually in determining the donated foods made available for ordering. One commenter supported the proposed provision, while two other commenters cited this proposed requirement as being too burdensome and impractical, given the need to balance recipient agency requests with other food ordering factors, such as filling full truckloads, abiding by fixed delivery periods, and ordering within the State's entitlement funding level. We do not intend to change this proposed requirement, though we recognize that State distributing agencies may take into account the quantity of food orders and balance competing demands prior to making final determinations on which foods are ultimately ordered. Still, the system must be request-driven. State distributing agencies may solicit recipient agency input through annual surveys or other cost-effective means. Recipient agency feedback should be incorporated in the State distributing agency decision process in a way that collectively balances the needs of all recipient agencies in the state and uses donated foods efficiently and without waste. Thus, the proposed provision at § 250.10(a) is retained without change in this final rule.

In § 250.10(b), we proposed to require the State distributing agency to ensure that recipient agencies have information on the types and quantities of donated foods that may be ordered, donated food specifications and nutritional value, and procedures for the disposition of donated foods that are out-of-condition or that are subject to a food recall. Two commenters expressed concerns about the availability of product information on USDA foods, including specifications and nutritional values. USDA Foods Information Sheets are acceptable forms of documentation to meet this requirement, along with information from the USDA Foods Web site. The specifications for USDA foods are also available on the USDA Agricultural Marketing Service Web site. USDA will continue to provide these materials to assist State distributing agencies in meeting this requirement. We are clarifying the proposed language in this provision to allow for the use of materials provided by USDA.

We also proposed to remove the specific stipulation, in current § 250.13(d)(2), that Section 416 bonus foods may not be distributed to recipient agencies if normal food expenditures would be reduced. The provision of donated foods is meant, in part, to assist recipient agencies in meeting their food assistance needs in a cost-effective manner. One commenter recommended retaining this provision to ensure bonus foods do not displace SFAs' orders placed using entitlement dollars. After further review, we agree with the commenter's recommendation and are placing the current language in revised § 250.10(c).

2. Delivery and Receipt of Donated Food Shipments, § 250.11

In § 250.11, we proposed to include requirements for the receipt of donated food shipments from USDA vendors or from a Federal storage facility, and the conditions for the replacement of donated foods delivered unsafe or out-of-condition by such entities. Three commenters requested clarification on the specifics of these proposed requirements. More detailed information on the procedures for the receipt of donated foods, the replacement of out-of-condition and damaged foods, and the payment of costs relating to shipments is provided in FNS Instruction 709–5, Revision 2, *Shipment and Receipt of USDA Foods.* Thus, the proposed provision in this regard is retained without change in this final rule.

In § 250.11(a), we proposed to remove the provision, in current § 250.13(a), that refers to the Department's responsibility to conform to scheduled delivery periods. While the Department strives to ensure timely deliveries to State distributing agencies and recipient agencies, such deliveries are subject to vendor and storage facility contracts and performance. Two commenters requested retaining this provision or amending the language, which would help State distributing agencies maintain an efficient and cost-effective program. We are retaining the current regulatory language in § 250.13(a) and moving it to § 250.11(a), clarifying that the Department will make every reasonable effort to meet scheduled delivery periods.

Another commenter requested including subdistributing agencies, distributors, and CSFP agencies in § 250.11(a) when referencing deliveries of donated foods from the vendor or Federal storage facility. In § 250.2 of this final rule, Definitions, we provide definitions for the distributing and recipient agencies referenced in this part. Recipient agencies are agencies or organizations that receive donated foods for distribution to eligible persons or for use in meals provided to eligible persons, in accordance with agreements with a distributing or subdistributing agency, or with another recipient agency. Local agencies in CSFP, and Indian Tribal Organizations distributing donated foods to eligible persons through FDPIR in a state in which the state government administers FDPIR, are considered recipient agencies in 7 CFR part 250. "Distributor" is defined separately in § 250.2 of this final rule.

In § 250.11(b), we proposed to require that the distributing or recipient agency, or other consignee, comply with all applicable Federal requirements in the receipt of donated food shipments. No comments were received on this section. Thus, the proposed revisions are retained without change in this final rule.

In § 250.11(c), we proposed to include requirements for the replacement of donated foods that are delivered out-of-condition by the vendor. Two commenters supported these proposed requirements. A third commenter recommended adding a timeline for replacing out-of-condition foods or crediting entitlement, as applicable, to ensure the food or entitlement can be used in the current program year. FNS cannot provide a specific timeline, as these issues must be treated on a case-by-case basis. To the greatest extent possible, FNS will continue to work to ensure that food or entitlement issues are addressed in a timely manner. Another commenter questioned whether the proposed regulations should be defining the terms of replacement by the vendor. Regulations at § 250.2 in this final rule define "Vendor" as a commercial food company from which the Department purchases foods for donation. For vendors currently responsible for delivering donated foods in good condition, this section further clarifies that requirement. We are providing further clarification in this final rulemaking to state that the vendor's responsibility to replace donated foods delivered out-of-condition extends until the expiration of the vendor warranty period included specifically in the vendor contract with USDA. Using specifically the vendor warranty period in the vendor contract with USDA will provide greater consistency for all donated foods vendors for the replacement of out-of-condition foods.

In § 250.11(d), we proposed to include the information, in current § 250.13(b), that the Department is responsible for payment of the cost of delivering donated foods from vendors or Federal storage facilities to consignees, as well as any processing or handling costs incurred up to the time of delivery, as is deemed in the best interest of the Department. In § 250.11(e), we proposed to include the provisions, in current § 250.13(c), relating to transfer of title to donated foods. No comments were received on these sections. Thus, the proposed revisions are retained without change in this final rule.

3. Storage and Inventory Management at the Distributing Agency Level, § 250.12

In § 250.12, we proposed to describe the requirements for the storage and management of donated food inventories at storage facilities used by the State distributing agency or subdistributing agency, which may include commercial storage facilities under contract with either the State distributing agency or the subdistributing agency. We received several comments on this section, as discussed below.

In § 250.12(a), we proposed to require that the State distributing agency ensure storage facilities comply with all Federal, State, or local requirements related to food safety and health, as applicable, and obtain all required health inspections. These proposed requirements should also include compliance with procedures for responding to a food recall, as suggested by one commenter. We agree with the commenter's recommendation, and are adding this language to this section of this final rule. Two commenters also requested additional clarification on the steps needed to fulfill food safety and health requirements, and recommended continuing to require compliance by subdistributing agencies and recipient agencies. The proposed requirements for storage facilities used by State distributing agencies (or subdistributing agencies, as applicable) may include commercial storage facilities under contract with either the State distributing agency or subdistributing agency. We are making this language more explicit in this final rule; however, we are not providing further clarification on the necessary steps, as the State distributing agency is responsible for maintaining the overarching responsibility of storage facility compliance, and retains discretion within applicable regulations to determine the manner in which such requirement is met.

In § 250.12(b), we proposed to retain language in current § 250.14(b) that State distributing agencies ensure that a separate inventory record of donated foods be maintained at all storage facilities utilized by the State distributing agency, and such foods must be distinguishable from other foods. No comments were received specific to proposed State distributing agency inventory management requirements in this regard. Thus, the proposed revision is retained without change.

In § 250.12(b), we proposed to retain the requirements in current §§ 250.14(e) and 250.15(c) that the State distributing agency conduct a physical review of donated food inventories and report donated food losses to FNS, respectively. One commenter noted that subdistributing agencies should also be allowed to conduct inventory reviews. The State distributing agency has the overarching responsibility for administration of programs, including physical reviews of inventories at subdistributing agency storage facilities. Therefore, we are not revising the physical review requirement in this regard. Another commenter asked for clarification on the proposed threshold for food loss that must be reported. Clarification on these proposed regulations is provided in § 250.16 of the preamble below, in regards to claims and restitution for donated food losses. Thus, the proposed language is retained without change.

In § 250.12(c), we proposed to include a six-month limitation on the amount of donated food inventories on-hand at the State distributing agency level for TEFAP, NSLP, and other child nutrition programs, with FNS approval required to maintain larger inventories, in accordance with current § 250.14(f)(2). The proposed provision is consistent with current regulatory requirements. Two commenters recommended including alternative means of maintaining inventories at acceptable levels, asserting that State distributing agencies should be permitted to exceed this limit within the FY or school year. One commenter also requested that the regulation clarify that these limitations be calculated for each food category. We are revising the language in this provision to provide additional clarification in regards to food categories. However, we are not changing the maximum inventory requirement in this final rule, which is consistent with the current regulatory standard. State distributing agencies should monitor their inventories on a monthly basis and plan their ordering and delivery schedules accordingly to ensure that inventories do not exceed six month levels at any given time without approval to maintain more from FNS. This practice helps to conserve program resources and to ensure that foods do not go out of condition before they are served.

In § 250.12(d), we proposed to require insurance for donated food inventories at State distributing agency, subdistributing agency, and recipient agency storage facilities. Two commenters supported this proposed provision. Several other commenters requested clarification on these requirements, particularly for smaller recipient agencies with limited financial resources. Under the proposed rule, insurance requirements would be enforced through management reviews and/or requests for documentation, both at the Federal and State levels, in accordance with proposed § 250.19. The proposed requirement would be intended for State distributing agencies, warehouses contracted with State distributing agencies, and recipient agencies that have direct agreements with State distributing agencies or subdistributing agencies. It would not apply to recipient agencies that have agreements with other recipient agencies, *e.g.,* many food pantries, soup kitchens, and community action agencies.

Under the proposed rule, the smaller recipient agencies that have direct agreements with a State distributing agency or subdistributing agency would have insurance commensurate with its average inventories; thus, costs incurred from obtaining insurance would be less. Nevertheless, in instances where obtaining insurance of donated foods would cause undue burden on recipient agencies that have direct agreements with State distributing agencies or subdistributing agencies but do not maintain significant inventories of donated foods, FNS is amending the insurance requirement in this final rulemaking to provide an exemption for those recipient agencies that maintain inventories with a value of donated foods that fall below a defined threshold. Such recipient agencies do not maintain sufficient inventory levels to justify the potential financial burden of obtaining insurance. We will issue a policy memorandum to define the threshold level for the value of donated foods in inventory that would exempt such recipient agencies.

In § 250.12(e), we proposed to include requirements for the transfer of donated foods between State distributing agencies and/or programs. Specifically, we proposed to permit the State distributing agency to transfer donated foods to another State distributing agency operating the same program without FNS approval. One commenter supported this proposed provision. However, after further review, we are clarifying in this final rulemaking that FNS approval is needed for all transfers of donated foods between State distributing agencies and/or programs, in accordance with current regulations at § 250.13(h). Obtaining approval for such transfers of donated foods is intended to ensure program integrity in the administration of food distribution programs.

We also proposed to require the State distributing agency to obtain an inspection of donated foods by State or local health officials before transferring them, if there is a question of food safety or at the direction of FNS, to ensure that only foods that are safe and not out-of-condition are transferred. One commenter recommended waiving the requirement to obtain a health inspection in cases of obvious spoilage or infestation. We agree it is unlikely that a transfer would be considered where obvious signs of spoilage or infestation exist. We also agree that inspections should be performed as necessary or as directed by FNS, and are revising the language accordingly.

We also proposed in this section to use the term "transfer" to refer to any redistribution of donated foods from one agency to another, or from one program to another, at the State distributing agency or recipient agency level, and to cease using the term "redonation." One commenter inquired about whether this terminology would be updated on USDA forms. FNS plans to incorporate these language revisions on all USDA forms to ensure consistency with Federal regulations.

In § 250.12(f), we proposed to revise the current provision which provides for termination of the contract between State distributing agencies and commercial storage facilities and extends the notification of termination of contracts by either party from 30 to 60 days. Two commenters supported this proposed change. One commenter suggested revising the language to provide for termination with or without cause, rather than noncompliance or other cause. Current regulations at § 250.14(d) allow the State distributing agency to terminate a contract with the State-contracted warehouse immediately due to noncompliance, which we are carrying forward into this final rulemaking. We are not otherwise making changes to the proposed language in this regard. Another commenter requested modifying the 60-day extension for notification of termination of contracts to also include an inventory limitation at the end of the school year. Regulatory inventory limitations are separate and distinct from contract termination. State solicitations/contracts for commercial storage facilities may include inventory limitations, as long as they are not less stringent than the six-month inventory limit set forth at proposed § 250.12(c)(1). Thus, the proposed provision at § 250.12(f) is retained without change in this final rule.

4. Efficient and Cost-Effective Distribution of Donated Foods, § 250.13

In § 250.13, we proposed to include requirements to ensure the distribution of donated foods to recipient agencies in the most efficient and cost-effective manner. In § 250.13(a), we proposed to retain the requirements, in current §§ 250.14(a) and 250.24(e), that the State distributing agency distribute donated foods to recipient agencies in the most efficient and cost-effective manner, and that such distribution is responsive to the needs of recipient agencies, as feasible. No comments were received on the proposed changes in this section. Thus, the proposed provision is retained without change in this final rule.

In § 250.13(b), we proposed to clarify that the State distributing agency must use State Administrative Expense (SAE) funds, as available, to meet the costs of storing and distributing donated foods, or related administrative costs, for SFAs or other recipient agencies in child nutrition programs, or must use other Federal or State administrative funds received for such purpose. We are clarifying in this final rulemaking that SAE funds only apply to child nutrition programs. We also proposed to require that the State distributing agency maintain a record of costs incurred in storing and distributing donated foods and related administrative costs, and the source of funds used to pay such costs. Four commenters suggested providing further clarification on SAE utilization, while another commenter inquired about to whom the recordkeeping requirements would apply. This section references SFAs or other recipient agencies in child nutrition programs, and would not apply to household programs. Additionally, the existing requirements for SAE usage are outlined in the Child Nutrition Program regulations at § 235.4 and in Policy Memorandum FD–131, "Questions and Answers Regarding the Use of SAE Funds and SAE Reallocation Funds in the Food Distribution Program for Child Nutrition Programs." The SAE reallocation guidance is also updated every FY by FNS Child Nutrition Programs in a memorandum to State distributing agencies which administer these programs. As a result, FNS is not providing additional guidance in this final rule.

Another commenter pointed out that SAE funds are not sufficient to cover storage and distribution costs in their entirety and that receiving reallocated SAE funds is not guaranteed. We recognize in proposed § 250.13 that there are circumstances when a State distributing agency could charge additional fees to SFAs if all SAE has been expended. We further recognize reallocated SAE funds are limited. To the greatest extent practical with available SAE resources, such funding should be used for storage and distribution costs at the State distributing agency level.

In § 250.13(c), we proposed to retain the requirement, in current § 250.14(a)(7), that the State distributing agency obtain FNS approval for changes to distribution charges at least 90 days in advance. These charges also include State administrative fees charged to a recipient agency by the State distributing agency (*e.g.*, per case fee). One commenter suggested reducing the notification period to 60 days, while another argued that the competitive procurement process for obtaining storage and distribution services should be sufficient justification for changes in fees equal to the contracted costs, and that we should remove this requirement altogether. The competitive procurement process by itself is not sufficient justification for changes to distribution charges, as there may be Federal (*e.g.*, SAE) or State funding available for distributing agencies to offset these costs. In addition, the 90-day window is required in the current 7 CFR part 250 regulations. This timeframe provides for sufficient review of any proposed change to ensure the distribution charge continues to cover only allowable costs, in accordance with 2 CFR part 200, subpart E, and USDA implementing regulations at 2 CFR part 400. It further allows for appropriate notification to impacted entities, should such charges be approved.

In the proposed rule, this language is meant as clarification, as pre-approval is already being implemented in most cases. The proposed rule is meant to minimize distribution charges to recipient agencies, as provided in this part. Thus, FNS is not changing these requirements, as they are meant to ensure that State distribution systems provide the most efficient and cost-effective service for SFAs in the provision of donated foods.

In § 250.13(d), we proposed to indicate that FNS may disapprove the State distributing agency's proposed new distribution charge or changes to an existing distribution charge, if FNS determines that such amount would not provide for the most cost-effective distribution of donated foods or would otherwise impact recipient agencies negatively. One commenter suggested providing clarification in § 250.13(c) and (d) on which programs would be required to meet the proposed requirements and whether distribution and storage fees can be placed on recipient agencies for household programs. Assessing distribution and storage fees to recipient agencies is prohibited in TEFAP, in accordance with § 251.9(d). Though assessing these fees is allowable in other household programs, it is not a common practice. We are clarifying in the regulatory text that these sections reference State distributing agency distribution charges to SFAs and other recipient agencies in child nutrition programs specifically.

5. Storage and Inventory Management at the Recipient Agency Level, § 250.14

In § 250.14, we proposed to include requirements for the storage and management of donated foods at the recipient agency level, including commercial storage facilities or other entities under contract with the recipient agency. In § 250.14(a), we proposed to require recipient agencies to meet the same requirements for food safety and health at their storage facilities as those proposed for the State distributing agency in § 250.12(a) of this rule. One commenter supported the proposed strengthening of language describing food safety standards in this provision, while another recommended including compliance with procedures for responding to a food recall in the requirements. We agree with the second commenter's recommendation, and are adding language to this provision in this final rule.

In § 250.14(b), we proposed to require that recipient agencies in household programs store donated foods in a manner that permits them to be distinguished from other foods at their storage facilities, and to maintain a separate inventory record of donated foods. One commenter requested clarification on this proposed provision in regards to whether a physical or electronic separation of donated foods is mandated. USDA foods must be distinguishable from non-USDA foods at the recipient agency level in household programs, though USDA is flexible with regard to how this distinction is made (*e.g.,* slotting USDA foods next to commercial foods, while still being able to distinguish between the two). However, the State distributing agency must ensure that USDA foods are ultimately further distributed in full for use in the appropriate household program.

Four additional commenters expressed confusion about the requirement to maintain a separate inventory record or stated that TEFAP recipient agencies should be permitted to utilize a single inventory management system, given the small amount of donated foods some carry for TEFAP. The proposed language in this section is meant to clarify existing requirements on inventory management and is not proposing any new changes. Policy Memorandum FD–020, "Single Inventory and Related Commodity Issues—Clarification of Regulatory Changes and Other Guidance," states that the regulatory changes related to single inventory referenced in this memorandum "do not apply to recipient (or local) agencies participating in FDPIR, CSFP, and TEFAP." FNS is codifying this policy in this final rule, as it helps to ensure that regulatory requirements are met. However, we recognize that this requirement may be burdensome for some recipient agencies and will continue to discuss possible solutions with State distributing agencies and local TEFAP agencies.

In § 250.14(c), we proposed to clarify that all recipient agencies in child nutrition programs, and those receiving donated foods as charitable institutions, are not required to separately monitor and report donated food use, distribution, or loss to the State distributing agency, unless there is evidence indicating that donated food loss has occurred as a result of theft or fraud. One commenter supported this proposed provision. Another commenter requested clarity on whether single inventory management for child nutrition programs and charitable institutions is optional or required, and whether the use of donated foods for training purposes under a single inventory management system is allowed. Recipient agencies in child nutrition programs, and those receiving donated foods as charitable institutions, have the flexibility to use single inventory management if they choose. They are not required to maintain separate records of donated foods. In regards to using donated foods for nutrition education and training purposes, this is allowable under a single inventory management system.

In § 250.14(d), we proposed to include requirements in current § 250.13(a)(1)(iii) for the transfer of donated foods from one recipient agency to another recipient agency and to clarify the types of transfers to which these requirements apply. We proposed to clarify that a recipient agency operating a household program request approval from the State distributing agency to transfer donated foods to another recipient agency in the same program, and that the transfer of donated foods to a recipient agency in another program (*i.e.,* through the State distributing agency) receive FNS approval. One commenter supported this proposal.

In this section, we also proposed to indicate that a recipient agency operating a child nutrition program, or one receiving donated foods as a charitable institution (in accordance with current § 250.67), may transfer donated foods to another recipient agency or charitable organization without prior approval from the State distributing agency or FNS. One commenter requested clarification on whether this applies to all child nutrition recipient agencies. All Child Nutrition Program recipient agencies would be considered agencies within the same program. This includes agencies administering NSLP, CACFP, and the Summer Food Service Program (SFSP).

Two additional commenters disagreed with this proposed provision and recommended retaining the current requirement for State distributing agency approval of transfers to maintain program integrity. Another commenter agreed with this proposed provision, but requested that the State distributing agency be notified if entitlement also needs to be transferred and that recipient agencies maintain records of such transfers for food safety and inventory management purposes. In child nutrition programs, donated foods cannot be readily identified once they enter into a single inventory management system at the recipient agency level, in accordance with current § 250.13(c). Therefore, the State distributing agency is no longer required to monitor such recipient agency's use and management of donated foods. Additionally, if the Child Nutrition Program recipient agency wants its State distributing agency to credit its entitlement after a transfer of donated foods takes place, the recipient agency would still have the option of contacting its State distributing agency to request such action. Recipient agencies are currently required to maintain records of donated food inventories, in accordance with current § 250.16(a)(2). Thus, the proposed changes are retained in this final rule, with only a minor clarification that the recipient agency must still maintain records of donated food inventories.

In § 250.14(e), we proposed to indicate that recipient agencies may obtain the services of a commercial storage facility to store and distribute donated foods, but must do so in compliance with procurement requirements now contained in 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 416, as applicable. No comments were received on this section. Thus, the proposed revisions are retained without change in this final rule.

6. Out-of-Condition Donated Foods, Food Recalls, and Complaints, § 250.15

In § 250.15, we proposed to include requirements for the disposition of donated foods that are out-of-condition, or that are subject to a food recall, and requirements for the resolution of recipient complaints related to donated foods. In § 250.15(a), we proposed to require the State distributing agency to obtain an inspection of donated foods by State or local health authorities to determine their safety and condition, as necessary, or as directed by FNS. In this final rulemaking, we are providing clarifying changes to state that out-of-condition donated foods should be removed, destroyed, or otherwise disposed of, in accordance with FNS instruction and State or local requirements. This new language is consistent with and codifies guidance in FNS Instruction 709–5, Revision 2. One commenter expressed concern about requiring State distributing agencies to obtain inspections if donated foods show obvious signs of spoilage. The proposed language specifies that inspections should be performed "as necessary, or as directed by FNS". FNS will continue to exercise its discretion and work to ensure no undue burden is placed on State distributing agencies in this regard. The proposed revisions are retained with only clarifying changes in this final rule.

In § 250.15(b), we proposed to require that recipient agencies in household programs report out-of-condition donated foods at their storage facilities to the State distributing agency, and ensure that such donated foods are destroyed, or otherwise disposed of, in accordance with State or local requirements pertaining to food safety and health. No comments were received on this section; however, we are adding clarifying changes to ensure that out-of-condition donated foods are also removed from storage facilities in accordance with FNS instruction and State or local requirements. This new language is consistent with and codifies FNS guidance in Instruction 709–5, Revision 2. Thus, the proposed revisions are retained with only clarifying changes in this final rule.

In § 250.15(c), we proposed to require that the State distributing agency or recipient agency, as appropriate, follow all applicable Federal, State, or local requirements for donated foods subject to a food recall. One commenter requested USDA guidance for household programs in regards to client notifications during food recalls. In accordance with proposed § 250.15(c), in the event of a recall, FNS will issue guidance to all parties in responding to that food recall, replacing recalled donated foods, and reimbursing specific costs incurred as a result of such actions. This guidance will include procedures or instructions to clients receiving donated foods. Thus, the proposed revisions are retained without change in this final rule.

In § 250.15(d), we proposed to require the State distributing agency to submit any complaints regarding donated food quality or specifications to FNS, and to prohibit the State distributing agency from disposing of any donated food that is the subject of a complaint prior to guidance and authorization from FNS. One commenter expressed concern regarding the proposed timeframe for complaint resolution, as well as the proposed prohibition of disposing of donated foods without prior FNS approval, even in cases of infestation. We acknowledge that receiving a response from the procurement agency or vendor regarding such complaints may cause delays. For this reason, we are unable to provide a specific timeline for the resolution of complaints but agree that complaints should be resolved as expeditiously as possible. Additionally, we are retaining the proposed regulatory requirement which prohibits the disposal of donated foods without prior FNS approval. This is due to contractual obligations with USDA's vendors, as well as food safety regulations. Thus, the proposed provision is retained without change in this final rule.

7. Claims and Restitution for Donated Food Losses, § 250.16

In § 250.16, we proposed to include requirements to ensure that restitution is made for donated food losses, including claims against parties responsible for such losses. In § 250.16(a), we proposed to require that the distributing agency ensure that restitution is made for donated food losses, and for the loss or improper use of funds provided for, or obtained incidental to, donated food distribution. One commenter was concerned that the State distributing agency would be held liable for unreported losses at the recipient agency level. In accordance with proposed § 250.15(b), losses must be reported by the recipient agency to the State distributing agency. The State distributing agency is responsible for following up on reported losses, while at the same time ensuring that recipient agencies are taking appropriate steps to limit food losses.

In § 250.16(b), we proposed to clarify that FNS may initiate and pursue a claim against the distributing agency or other entities for the loss of donated foods, and for the loss or improper use of funds provided, or obtained incidental to donated food distribution. One commenter requested clarification on the quantity or value of donated food losses that would be required to submit a claim. In accordance with FNS Instruction 410–1, Revision 2, *Claims for Losses of Donated Foods and Related Administrative Losses—Procedures for the State Distributing Agency*, if the State distributing agency determines that the value of the donated food loss, or improper use of funds, does not exceed $500, or does not exceed an amount established by State statute for pursuit of a claim (if greater than $500), the State distributing agency is not required to pursue a claim, except in cases of theft, embezzlement, willful misapplication, or fraud. The proposed regulations in this section stated that FNS may compromise, forgive, or waive a claim. However, FNS waiver is not guaranteed. In addition, we proposed to remove blanket exemptions for inventory losses from the regulations for the purpose of encouraging more efficient inventory management. The proposed revisions are retained without change in this final rule.

8. Use of Funds Obtained Incidental to Donated Food Distribution, § 250.17

In § 250.17, we proposed to include requirements for the use of funds obtained incidental to donated food distribution. In § 250.17(a), we proposed to clarify requirements in current § 250.15(f)(2) related to the use of funds obtained from the distribution charge imposed on recipient agencies in child nutrition programs, in accordance with proposed § 250.13(b). In § 250.17(b), we proposed to require that SFAs use funds obtained from processors in the processing of donated foods into end products, or from food service management companies (FSMCs) in crediting for the value of donated foods, in support of the nonprofit school food service. In § 250.17(c), we proposed to clarify requirements in current § 250.15(f)(1) and (2) related to funds collected in claims for donated food losses, and funds obtained from other sources incidental to donated food distribution. In § 250.17(d), we proposed to clarify that the distributing agency is prohibited from using funds obtained incidental to donated food distribution to meet State matching requirements for other Federal grants received—*e.g.*, for FDPIR or TEFAP. No comments were received on paragraphs (a) through (d) of this section. Thus, these proposed provisions are retained without change in this final rule.

In § 250.17(e), we proposed to clarify the "Buy American" requirement, in current § 250.23, for the purchase of foods with such funds. One commenter expressed appreciation for this clarification, but requested guidance for State distributing agencies on how to enforce the Buy American provision for cash-in-lieu schools and CACFP agencies, and whether enforcement would be part of the State's administrative review. Enforcement of the Buy American provision for cash-in-lieu schools and CACFP agencies is not a formal part of the State's administrative review. However, State distributing agencies are required to monitor such agencies like they would any other SFA receiving funds under child nutrition programs. Consistent with the requirements found in FNS Instruction 796–2, "Financial Management—CACFP," institutions are required to maintain sufficient records to document the proper use of these payments, including the purchase of only domestic products. Thus, the proposed provision is retained without change in this final rule.

9. Reporting Requirements, § 250.18

In § 250.18, we proposed to include requirements for the submission of reports related to the distribution and control of donated foods. No comments were received on these proposed changes. Thus, the proposed provision is retained without change in this final rule.

10. Recordkeeping Requirements, § 250.19

In § 250.19, we proposed to include recordkeeping requirements relating to the distribution and control of donated foods. In § 250.19(a), we proposed to require that processors maintain records documenting the sale of end products to recipient agencies, including the sale of such end products by distributors, and that failure to maintain required records must be considered prima facie evidence of improper distribution or loss of donated foods and may result in a claim. One commenter requested guidance for State distributing agencies on how to ensure that applicable entities are maintaining agency records properly. The proposed language states that processors must maintain records of sales to recipient agencies. The recipient agency would therefore have a record of such sales through invoices from a distributor or processor. Another commenter recommended adding that the processor must also maintain records of monthly performance reports. Proposed § 250.30(c) requires processors to meet the requirements of § 250.19 in maintaining records pertaining to the receipt, distribution, and control of donated foods, and the sale of end products, and current regulations at § 250.30(m) require processors to submit processing performance reports to State distributing agencies. We are referencing the applicable section in § 250.19 of this final rule. The commenter also requested clarification on who would be authorized to make the claim referenced in § 250.19(a). Under the proposed rule and consistent with current regulatory requirements at § 250.54(d) and applicable instruction, failure of the State distributing agency, recipient agency, or other entity to comply with recordkeeping requirements may result in a claim being assessed by FNS or the State distributing agency against such entity. We are clarifying in this final rule that "other entities" may include processors.

In § 250.19(a), we also proposed to require State distributing agencies to keep a record of the value of donated foods received by each of its SFAs. One commenter requested clarification on when and how this value should be determined. Section 250.58(e) of the proposed rule states that the State distributing agency must use either the cost-per-pound donated food prices posted annually by USDA or the most recently published cost-per-pound price in the USDA donated foods catalog in meeting the value of donated foods each SFA should receive. States may also use a rolling average of the USDA prices (average cost per pound), as further described in the discussion of § 250.58(e) in the preamble to this final rule. The State distributing agency would be required to credit the SFA using the USDA purchase price (cost-per-pound), and update the price at least semi-annually to reflect the most recent purchase price. This price would be considered the valuation of record. We are citing this regulatory reference within § 250.19(a) to provide greater clarity.

In § 250.19(b), we proposed to retain, without change, requirements in current § 250.16(b) relating to the length of time that records must be retained. No comments were received on this section. Thus, the proposed provision is retained without change in this final rule.

11. Audit Requirements, § 250.20

In § 250.20, we proposed to include reference to Federal audit requirements for State distributing agencies and recipient agencies, and audit requirements for processors. In § 250.20(a), we proposed to reference audit requirements now contained in 2 CFR part 200, subpart F and appendix XI, Compliance Supplement, and USDA implementing regulations at 2 CFR part 400 for State or local government agencies and nonprofit organizations that receive Federal grants, as such requirements apply to distributing and recipient agencies. No comments were received on this section. Thus, the proposed provision is retained without change in this final rule.

In § 250.20(b), we proposed to amend the current audit requirement for multi-state processors by requiring that a multi-state processor obtain an independent CPA audit in each of the first two years that it receives donated foods for processing. After the first two years, we proposed to require a multi-state processor to obtain such an audit at a frequency determined by the average value of donated foods received for processing per year, as currently required. One commenter supported this provision.

In § 250.20(b), to more closely align the requirements for in-state and multi-state processors, we also proposed to include requirements for in-state processors to obtain an independent CPA audit to determine compliance with processing requirements for donated foods. One commenter showed concern that these proposed requirements may prohibit in-state processors from participating in the program, due to the cost of the required audit, and that there are no guidelines for what the CPA audit should include. The proposed regulatory thresholds that would trigger an audit in § 250.20(b) are already in place via Policy Memorandum FD–102, "Waiver and Replacement of Current Regulatory Thresholds for Independent CPA Audits of Multi-State Processors." The audit thresholds are being extended to in-state processors as proposed, and applicable guidance will be provided as necessary. These proposed revisions are meant to prioritize alleviating burden on and costs for State distributing agencies to perform on-site reviews. The FNS Audit Guide for Processors, which is available on the FNS Web site, details the guidelines for a nonfederal auditor to use in conducting audits of processors. The proposed regulations would refer to this guide as the basis for both in-state and multi-state reviews. The proposed revisions are retained without change in this final rule.

The commenter also expressed concern that given that CPAs are not food safety inspectors, processors should still conduct food safety inspections through independent agreements. In-state processors should continue to follow state and local laws and the procedures outlined in the State agreement, as long as the agreement is in compliance with current Federal regulatory requirements. Since CPA audits are separate and distinct from food safety inspections, the proposed revisions are retained without change in this final rule.

In regards to the proposed requirements in § 250.20(a) and (b), two commenters recommended requiring in-state processors to go through the NPA Program and managing all processors at the Federal level to alleviate burden on State distributing agencies. We appreciate the commenters' recommendation; however, requiring in-state processors to sign NPAs is outside the scope of this final rule. Also, the requirement to obtain independent CPA audits would alleviate, not add, burden on the State distributing agency. Therefore, we do not intend to change the proposed rule in this regard. We will, however, further consider these comments in upcoming rulemaking.

In § 250.20(c), we proposed to include the actions required of processors resulting from the audits, including requiring in-state processors to submit a copy of the audit to the distributing agency for review by December 31 of each year in which an audit is required. One commenter requested clarification on how this proposed rule relates to OMB's Uniform Guidance at 2 CFR part 200 in regards to audits for nonfederal entities. Title 2 CFR part 200 does not cover processors or other private, for-profit contractors. The definition of "Non-Federal entity" at 2 CFR 200.69 includes only State distributing agencies, local governments, Indian Tribal Organizations, institutions of higher education, and nonprofit organizations. For this reason, we have a separate, program-specific regulatory requirement for audits of processors. Therefore, the audit requirement in this section of the proposed rule is retained without change in this final rule.

In § 250.20(d), we proposed to indicate that a State distributing agency or recipient agency is subject to sanctions for failure to obtain the required audit, or for failure to correct deficiencies identified in audits. One commenter noted that a multi-state processor operating under an NPA submits its audits to FNS, and State distributing agencies and local agencies do not see the findings or corrective action plans. The commenter recommended that this section reflect that only FNS sees the audit and plans. We are revising the language in this section of the final rule to provide clarification in this regard.

12. Distributing Agency Reviews, § 250.21

In § 250.21, we proposed to include the requirements for the State distributing agency to review subdistributing agencies, recipient agencies, and other entities to ensure compliance with requirements related to the distribution and control of donated foods. In § 250.21(a), we proposed to clarify that the State administering agency, not the distributing agency, is required to review SFAs and other recipient agencies in child nutrition programs. One commenter agreed with this proposed clarification. We also proposed in § 250.21(b) to remove the requirement, in current § 250.19(b)(1)(iii), that the State distributing agency perform on-site reviews of in-state processors, as the on-site review would be replaced by review of the audits required of such processors, in accordance with § 250.20 of the proposed rule. One commenter agreed with this proposal, but recommended that this approach be expanded to require all processors, both in-state and multi-state, to go through the NPA Program, as many States do not allow in-state processing due to a lack of resources to manage the approval process. As discussed above, we appreciate this commenter's recommendation; however, it is outside the scope of this final rule. We can further consider this comment in upcoming rulemaking.

In § 250.21(b), we proposed to require that the State distributing agency ensure compliance with requirements in 7 CFR part 250, and in other Federal regulations as applicable, through its review of required reports, and through on-site reviews of the recipient agencies and other entities. One commenter requested clarification on whether State distributing agencies would be allowed to delegate the review of recipient agencies to a subdistributing agency. Though the State distributing agency may enter into an agreement with a subdistributing agency to handle the distribution and control of donated foods, the State distributing agency would still have the overarching responsibility of program administration and integrity, in accordance with proposed § 250.4(b), including reviews of subdistributing and recipient agencies, and other entities. Thus, the proposed revisions are retained without change in this final rule.

In § 250.21(c), we proposed to include the requirement, in current § 250.19(b)(3) and (4), that the distributing agency report deficiencies identified in its review to recipient agencies or other entities, recommend corrective actions, and ensure that such actions are completed. No comments were received on this section. Thus, the proposed provision is retained without change in this final rule.

13. Distributing Agency Performance Standards, § 250.22

In § 250.22, we proposed to include the performance standards that the State distributing agency must meet, most of which are included in current § 250.24. No comments were received on these proposed changes. Thus, the proposed provision is retained without change in this final rule.

C. Subpart C—Processing and Labeling of Donated Foods

In § 250.30, we proposed to amend current subpart C of 7 CFR part 250 to reduce reporting requirements related to the processing of donated foods, and to remove the requirement that the processor make a payment to the State distributing agency for the value of excessive donated food inventories at the annual reconciliation, but rather reduce such inventories. We proposed to remove the requirement, in current § 250.30(k)(3), that the processor submit copies of requests for refunds and refund payments to the distributing agency. We also proposed to remove the requirements, in current § 250.30(n)(4) and (o), that the distributing agency submit monthly performance reports, or information from such reports, to FNS on a periodic basis. In addition, we proposed to remove the requirement, in current § 250.30(m)(1)(viii), that the processor report sales verification findings to the distributing agency.

Current regulations at § 250.30(n)(3) require a processor that has a processing agreement with the State distributing agency for the following year to pay the State distributing agency for the value of any donated food inventory held at the end of the current year that is in excess of the six-month inventory limit, or that is in excess of a higher inventory level approved by the State distributing agency in accordance with § 250.30(n)(1). We proposed to revise the regulations in this section to require such processors to reduce excessive donated food inventories as part of the annual reconciliation with the distributing agency, rather than paying the distributing agency for the value of such donated foods. In this final rule, we are providing additional flexibility to State distributing agencies in this regard to further align the regulatory language with the requirements for the management of donated food inventories at processors set forth in Policy Memorandum FD–064. In cases where reducing excessive inventories at processors, as required in proposed § 250.30(n)(3), is not practical, distributing agencies must require the processor to pay for the donated foods held in excess of allowed levels, at the replacement value of the donated foods. These changes are reflected in § 250.30(n)(3) of this final rulemaking.

Two commenters supported the proposed changes overall. One commenter also recommended that USDA work to assess the contributing issues behind excessive inventories. FNS has been working with the program community to find ways to prevent excessive inventory levels at processors and in food distribution programs, and will continue to do so moving forward. Thus, the remaining proposed revisions in this Subpart are retained without change in this final rule.

D. Subpart D—Donated Foods in Contracts With Food Service Management Companies

We proposed to amend current subpart D of 7 CFR part 250 to clarify requirements in the storage, control, and use of donated foods in contracts with

FSMCs. In current § 250.50(a), we proposed to amend regulatory language to clarify that the FSMC must use all donated foods received in the recipient agency's food service, or must use commercial substitutes in place of such donated foods only as permitted in § 250.51(d). One commenter requested that USDA provide examples of acceptable commercial substitutions and when they may be used. Another commenter asked for clarification in regards to substitution in advance of purchase of donated foods. Though specific to processing of donated foods, information on acceptable commercial substitutions which is also applicable to FSMCs can be found in current policy memoranda, including FD–130, "Substitution of USDA Beef and Pork," FD–122, "Substitution of Donated Foods in Advance of Purchase and Negative Inventories," and FD–049, "Substitution and Valuation of USDA Cheese." Additionally, the intent behind the proposed regulation was to allow FSMCs to have more flexibility in managing inventory. FSMCs receive donated foods, credit the SFA, and then use donated foods for other accounts and replace it later with commercial food. Although substitution in advance of purchase is not prohibited by current regulations, FNS does not recommend it. As stated in Policy Memorandum FD–122, USDA cannot guarantee the purchase and provision of donated foods for processing. We are not providing clarification to a scenario which we do not encourage and that is limited.

Current requirements in § 250.51(d) also state that the FSMC must fully utilize all ground beef and pork in the client school district. This requirement is also referenced in § 250.52, Storage and inventory management of donated foods, and § 250.53, Contract provisions. Another commenter recommended amending this subpart to add meat products other than ground, given the addition of alternative raw meat products for further processing to the donated foods catalog, such as boneless beef. Current regulations allow for the use of all meat products—not just ground—in the recipient agency's food service. Nevertheless, we are removing reference to "ground" beef and pork in §§ 250.51(d), 250.52(b) and (c), and 250.53(a)(5) of the final rule to provide greater clarity.

In § 250.52(a), we proposed to clarify that the FSMC must meet the requirements in proposed § 250.14(a) for the safe storage and control of donated foods. No comments were received on this section. Thus, the proposed revisions are retained without change in this final rule.

E. Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs

We proposed to amend current subpart E of 7 CFR part 250 to ensure that SFAs are able to order and receive the donated foods they can best utilize in the school food service, and to clarify requirements for SFAs in the storage, inventory management, and use of donated foods. In § 250.58(a), we proposed to require that the State distributing agency ensure that all SFAs are able to submit orders for donated foods electronically, and that distribution of these foods to SFAs is done in a cost-effective manner. One commenter agreed with these proposed revisions.

In crediting the SFA's donated food assistance level, under current regulations at § 250.58(e), the State distributing agency may choose among three options in valuing donated foods, including (1) the USDA purchase price (cost per pound), (2) the estimated cost-per-pound data included in survey memoranda, and (3) the commodity file cost as of a specified date. In § 250.58(e), we proposed to require that the State distributing agency use either the donated food cost-per-pound prices posted annually by USDA or the most recently published cost-per-pound in the USDA donated foods catalog in meeting the commodity offer value of donated foods provided to the SFA, as required in current § 250.58(b). One commenter agreed with this proposed change. Two other commenters demonstrated confusion about the proposed change and requested further clarification.

The commodity offer value, as defined in the proposed rule and current regulations, means the minimum value of donated foods that the State distributing agency must offer to SFAs participating in NSLP each school year. The commodity offer value is equal to the national per meal value of donated food assistance multiplied by the number of reimbursable lunches served by the SFA in the previous school year. To provide further clarification on State distributing agency responsibilities in this regard, we are revising the regulatory language in this final rulemaking to clarify that the methods referenced above are for measuring whether the SFA has received the commodity offer value of donated foods (*i.e.,* credit entitlement).

The overall intent of the proposed changes is to ensure that State distributing agencies do not use outdated pricing information in crediting their SFAs' entitlement. Price updates would reflect the donated foods value at a specific point in time up until prices are updated again later in the year. Importantly, pricing information does not need to be updated retroactively. Thus, the two proposed methods remain in this final rule.

In this final rulemaking, in response to comments received, we are also providing a third option for State distributing agencies to determine the donated foods value in crediting SFAs' entitlements. State distributing agencies may choose to calculate a rolling average of USDA cost-per-pound prices found in each State distributing agency's USDA foods sales orders in the FNS electronic donated foods ordering system, Web-Based Supply Chain Management (WBSCM). A rolling average meets the proposed requirement of updating prices at least semi-annually, and provides State distributing agencies with additional flexibility. These changes are reflected in § 250.58(e) of this final rulemaking.

In § 250.59(a), we proposed to indicate that the SFA must ensure the safe and sanitary storage, inventory management, and use of donated foods and purchased foods, in accordance with requirements in current § 210.13. One commenter noted that sections of 7 CFR part 250 should be referenced here as well. We are clarifying and revising these references to provide that SFAs are required to maintain storage facilities in accordance with § 210.13 and proposed §§ 250.13 and 250.14.

In § 250.59(b), we proposed to include the requirements in current § 250.60(a) for the use of donated foods in the nonprofit school food service, with only minor clarifications. In § 250.59(e), we proposed to clarify requirements for two or more SFAs acting as a collective unit in conducting activities relating to donated foods. No comments were received on these sections. Thus, the proposed revisions are retained without change in this final rule.

F. Subpart F—Household Programs

We proposed to revise current subpart F to streamline and clarify current descriptions of, and requirements for, the distribution of donated foods in CSFP and FDPIR, and to include such information for TEFAP. No comments were received on these proposed changes. Thus, the proposed revisions are retained without change in this final rule.

G. Subpart G—Additional Provisions

We proposed to amend current subpart G of 7 CFR part 250 by clarifying requirements for the distribution of donated foods in response to disasters and situations of distress. Comments received on this subpart are outlined below.

1. Nutrition Services Incentive Program (NSIP), § 250.68

In § 250.68, we proposed to retain the same language as provided in current regulations on NSIP. In this final rulemaking, we are removing outdated references to "AoA" and "State Agencies on Aging," given the use of new terminology and changes to program administration at DHHS. NSIP is now administered by DHHS' ACL, not AoA. In addition, NSIP grants are provided to State Units on Aging, which were formerly referred to as "State Agencies on Aging."

2. Disasters, § 250.69

In § 250.69, we proposed to revise current § 250.69 to clarify requirements for the distribution and use of donated foods in a disaster, contingencies for replacement of such foods, and reporting requirements. In § 250.69(a), we proposed to retain the current provision in § 250.69(b) that the distributing agency may provide donated foods from current inventories, at the distributing or recipient agency level, to approved disaster organizations for use in providing congregate meal assistance to persons in need of food assistance as a result of a disaster. Two commenters agreed with the proposed provisions, including the proposed revision to allow the transfer of donated foods without FNS approval during emergencies and disasters.

In § 250.69(b), we proposed to retain the current provision in § 250.69(c) that the distributing agency may provide donated foods to disaster organizations for distribution to households in need of food assistance once FNS approval has been obtained for such distribution. No comments were received on this section. Thus, the proposed provision is retained without change in this final rule.

In § 250.69(c), we proposed to retain the current requirement that the State distributing agency review and approve a disaster organization's application to provide donated food disaster assistance before distributing donated foods to such organization. One commenter expressed concern about the proposed application requirements not being comprehensive enough in this section and in § 250.70(c). FNS already provides guidance on this topic on the FNS Web site and in the FNS USDA Foods Program Disaster Manual, which includes an application template. We are adding to the regulatory text in proposed §§ 250.69(c) and 250.70(c) that these requirements are in accordance with applicable FNS guidance.

In § 250.69(d), we proposed to include the current requirement that disaster organizations collect information from households receiving donated foods, if issuance of Disaster—Supplemental Nutrition Assistance Program (D–SNAP) benefits has also been approved, in order to ensure that households receiving D–SNAP benefits do not also receive donated foods. In § 250.69(e), we proposed to include the provision, in current § 250.13(d)(1), that permits disaster relief workers to receive meals containing donated foods due to their service to eligible recipients. In § 250.69(f), we proposed to include the current requirement that the distributing agency report to FNS the number and location of sites where donated foods are used in congregate meals or household distribution, as these sites are established. No comments were received on these sections. Thus, the proposed provisions are retained without change in this final rule.

In § 250.69(g), we proposed to clarify that, for food diverted from inventories of recipient agencies in child nutrition programs, FNS will replace such food if the recipient agency received the same types of donated food during the year preceding the onset of the disaster assistance. One commenter recommended amending this proposed language to require that the State distributing agency confirm that the recipient agency received the donated food before replacement can occur. Replacement of donated foods would occur at the State distributing agency's request, in accordance with this proposed part. Thus, the proposed revisions are retained without change in this final rule.

In § 250.69(h), we proposed to indicate that FNS will, upon receiving a distributing agency request via public voucher, reimburse the distributing agency for any costs incurred in transporting donated foods within the State, or from one State to another, for use in disasters. No comments were received on this section. Thus, the proposed provision is retained without change in this final rule.

3. Situations of Distress, § 250.70

In § 250.70, we proposed to revise current § 250.70 to clarify requirements for the distribution and use of donated foods in a situation of distress, contingencies for replacement of such foods, and reporting requirements. No comments were received on these proposed changes. Thus, the proposed provisions at § 250.70(c) are retained in this final rule with only minor change to clarify that the State distributing agency must review and approve a disaster organization's application to receive donated foods "in accordance with applicable FNS guidance," before forwarding the application to FNS for review and approval.

7 CFR Part 251

We proposed to amend 7 CFR part 251 to conform certain requirements for distribution of donated foods in TEFAP to requirements for such distribution in other programs, or with changes to 7 CFR part 250 in the proposed rule. We proposed to align requirements in the transfer of TEFAP foods, and in ensuring restitution for losses of TEFAP foods, with such requirements for other donated foods, as proposed in this rule. One commenter requested clarification on the quantity or value of food losses that must be reported. We responded to this comment in this preamble discussion of §§ 250.12(b) and 250.16. Thus, the proposed revisions are retained without change in this final rule.

In this final rule, we are also amending § 251.4(c) to establish that, beginning in FY 2015, allocations of donated food funds for distribution through TEFAP will be available to States for two FYs and will expire at the end of the FY after the FY in which they were appropriated. For example, donated food funds allocated in FY 2015 will be available in FY 2015 and FY 2016, and will expire at the end of FY 2016. This change is being added after the proposed rulemaking to implement new legislation under the 2014 Farm Bill.

Miscellaneous Updates to Financial Management Regulatory Citations and Other Non-Substantive Changes

We are making other non-substantive changes in this final rulemaking to rewrite the regulations in a more user-friendly, "plain language" format, and to keep regulatory references current. We are amending current regulations at 7 CFR parts 250 and 251 in this final rule to revise outdated citations to financial management circulars and regulations. OMB issued new guidance at 2 CFR part 200 titled Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). OMB's Uniform Guidance replaces 7 CFR parts 3015, 3016, 3019, and 3052, and cost principles addressed in 2 CFR parts 220 (A–21), 225 (A–87), and 230 (A–122). The USDA regulations implementing OMB's Uniform Guidance are located at 2 CFR parts 400, 415, 416, and 418. We are amending current regulations after the proposed rulemaking to make conforming revisions to citations at 2 CFR part 200 and 2 CFR parts 400, 415, 416, and 418. We are also amending the regulatory language by replacing the word "shall" with "must" wherever it appears.

III. Procedural Matters

A. Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant and was not reviewed by OMB in conformance with Executive Order 12866.

B. Regulatory Impact Analysis

This rule has been designated as not significant by OMB; therefore, no Regulatory Impact Analysis is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. Although the rule would require specific procedures for distributing and recipient agencies to follow in the distribution and control of donated foods, USDA does not expect them to have a significant impact on such entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12372

The donation of foods in USDA food distribution and child nutrition programs is listed in the Catalog of Federal Domestic Assistance Programs under 10.555, 10.558, 10.559, 10.565, 10.567, 10.568, and 10.569. For the reasons set forth in the final rule in 2 CFR part 415, subpart C, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

F. Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13121. FNS has considered the impact of this rule on State and local governments and has determined that this rule does have Federalism implications.

1. Prior Consultation With State Officials

The programs affected by the regulatory proposals in this rule are all State-administered, Federally-funded programs. Hence, our national headquarters office has formal and informal discussions with State and local officials, as well as commercial contractors, on an ongoing basis regarding issues relating to the distribution and control of donated foods. FNS attends annual conferences of the American Commodity Distribution Association, a national group with State, local, and industry representation, and the School Nutrition Association, as well as other conferences.

2. Nature of Concerns and the Need to Issue This Rule

The rule addresses the concerns of program operators that distribute and use donated foods in food distribution and child nutrition programs. The rule would reduce the reporting and administrative workload for State distributing agencies and recipient agencies involved in the distribution and control of donated foods.

3. Extent to Which We Meet Those Concerns

FNS has considered the impact of the rule on State distributing agencies and local agencies. The overall effect of this rule is to ensure that such agencies are able to utilize and distribute donated foods safely and efficiently, with a minimal reporting and recordkeeping burden. FNS is not aware of any case in which the provisions of the rule would preempt State law.

G. Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

H. Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with USDA Regulation 4300–4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in food distribution and child nutrition programs.

I. Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. On February 13, 2013, as part of its regular quarterly Tribal consultation schedule, USDA engaged in a consultative session to obtain input by Tribal officials, or their designees, and Tribal members concerning the effect of this and other rules on the Tribes or Indian Tribal governments. In regard to the provisions of this rule, at the consultative session a Tribal member requested, and FNS provided, clarification regarding the purpose of this rule. No concerns regarding the provisions of the rule were expressed. We are unaware of any current Tribal laws that could be in conflict with the final rule.

J. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires OMB to approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. No changes have been made to the proposed information collection requirements in this final rulemaking. Thus, in accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with this final rule, which were filed under 0584–0293, have been submitted for approval to OMB. When OMB notifies FNS of its decision, FNS will publish a notice in the **Federal Register** of the action.

K. E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 250

Disaster assistance, Food assistance programs, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 251

Food assistance programs, Grant programs—social programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250 and 251 are amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

■ 2. Revise subpart A to read as follows:

Subpart A—General Purpose and Administration

Sec.
250.1 Purpose and use of donated foods.
250.2 Definitions.
250.3 Administration at the Federal level.
250.4 Administration at the State level.
250.5 Civil rights.

§ 250.1 Purpose and use of donated foods.

(a) *Purpose.* The Department purchases foods and donates them to State distributing agencies for further distribution and use in food assistance programs, or to provide assistance to eligible persons, in accordance with legislation:

(1) Authorizing donated food assistance in specific programs (*e.g.,* the Richard B. Russell National School Lunch Act for the National School Lunch Program (NSLP)); or

(2) Authorizing the removal of surplus foods from the market or the support of food prices (*i.e.,* in accordance with Section 32, Section 416, and Section 709, as defined in § 250.2).

(b) *Use of donated foods.* Donated foods must be used in accordance with the requirements of this part and with other Federal regulations applicable to specific food assistance programs (*e.g.,* 7 CFR part 251 includes requirements for the use of donated foods in The Emergency Food Assistance Program (TEFAP)). Such use may include activities designed to demonstrate or test the effective use of donated foods (*e.g.,* in nutrition classes or cooking demonstrations) in any programs. However, donated foods may not be:

(1) Sold or exchanged, or otherwise disposed of, unless approved by FNS, or specifically permitted elsewhere in this part or in other Federal regulations (*e.g.,* donated foods may be used in meals sold in NSLP);

(2) Used to require recipients to make any payments or perform any services in exchange for their receipt, unless approved by FNS, or specifically permitted elsewhere in this part or in other Federal regulations; or

(3) Used to solicit voluntary contributions in connection with their receipt, except for donated foods provided in the Nutrition Services Incentive Program (NSIP).

(c) *Legislative sanctions.* In accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1760) and the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note), any person who embezzles, willfully misapplies, steals, or obtains by fraud any donated foods (or funds, assets, or property deriving from such donated foods) will be subject to Federal criminal prosecution and other penalties. Any person who receives, conceals, or retains such donated foods or funds, assets, or property deriving from such foods, with the knowledge that they were embezzled, willfully misapplied, stolen, or obtained by fraud, will also be subject to Federal criminal prosecution and other penalties. The distributing agency, or other parties, as applicable, must immediately notify FNS of any such violations.

§ 250.2 Definitions.

2 CFR part 200 means the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards published by OMB. The Part reference covers applicable: Acronyms and Definitions (subpart A), General Provisions (subpart B), Post Federal Award Requirements (subpart D), Cost Principles (subpart E), and Audit Requirements (subpart F). (NOTE: Pre-Federal Award Requirements and Contents of Federal Awards (subpart C) do not apply to the National School Lunch Program).

ACL means the Administration for Community Living, which is the DHHS agency that administers NSIP.

Administering agency means a State agency that has been approved by the Department to administer a food assistance program. If such agency is also responsible for the distribution of donated foods, it is referred to as the distributing agency in this part.

Adult care institution means a nonresidential adult day care center that participates independently in CACFP, or that participates as a sponsoring organization, and that may receive donated foods or cash-in-lieu of donated foods, in accordance with an agreement with the distributing agency.

Bonus foods means Section 32, Section 416, and Section 709 donated foods, as defined in this section, which are purchased under surplus removal or price support authority, and provided to distributing agencies in addition to legislatively authorized levels of assistance.

CACFP means the Child and Adult Care Food Program.

Carrier means a commercial enterprise that transports donated foods from one location to another, but does not store such foods.

Charitable institutions means public institutions or private nonprofit organizations that provide a meal service on a regular basis to predominantly eligible persons in the same place without marked changes. Some types of charitable institutions are included in § 250.67.

Child care institution means a nonresidential child care center that participates independently in CACFP, or that participates as a sponsoring organization, in accordance with an agreement with the distributing agency.

Child nutrition program means NSLP, CACFP, SFSP, or SBP.

Commodity offer value means the minimum value of donated foods that the distributing agency must offer to a school food authority participating in NSLP each school year. The commodity offer value is equal to the national per-meal value of donated food assistance multiplied by the number of reimbursable lunches served by the school food authority in the previous school year.

Commodity school means a school that operates a nonprofit food service, in accordance with 7 CFR part 210, but that receives additional donated food assistance rather than the cash assistance available to it under Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753).

Consignee means an entity (*e.g.*, the distributing or recipient agency, a commercial storage facility, or a processor) that receives a shipment of donated foods from a vendor or Federal storage facility.

Contract value of the donated foods means the price assigned by the Department to a donated food which must reflect the Department's current acquisition price. This may alternatively be referred to as the USDA purchase price.

Contracting agency means the distributing agency, subdistributing agency, or recipient agency which enters into a processing contract.

CSFP means the Commodity Supplemental Food Program.

Department means the United States Department of Agriculture (USDA).

DHHS means the United States Department of Health and Human Services.

Disaster means a Presidentially declared disaster or emergency, in accordance with Section 412 or 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179–5180), in which Federal assistance, including donated food assistance, may be provided to persons in need of such assistance as a result of the disaster or emergency.

Disaster organization means an organization authorized by FNS or a distributing agency, when appropriate, to provide assistance to survivors of a disaster or a situation of distress.

Distributing agency means a State agency selected by the Governor of the State or the State legislature to distribute donated foods in the State, in accordance with an agreement with FNS, and with the requirements in this part and other Federal regulations, as applicable (*e.g.*, a State agency distributing donated foods in CSFP must comply with requirements in 7 CFR part 247). Indian Tribal Organizations may act as a distributing agency in the distribution of donated foods on, or near, Indian reservations, as provided for in applicable Federal regulations (*e.g.*, 7 CFR part 253 or 254 for FDPIR). A distributing agency may also be referred to as a State distributing agency.

Distribution charge means the cumulative charge imposed by distributing agencies on school food authorities to help meet the costs of storing and distributing donated foods, and administrative costs related to such activities.

Distributor means a commercial food purveyor or handler who is independent of a processor and charges and bills for the handling of donated foods, and/or sells and bills for the end products delivered to recipient agencies.

Donated foods means foods purchased by USDA for donation in food assistance programs, or for donation to entities assisting eligible persons, in accordance with legislation authorizing such purchase and donation. Donated foods are also referred to as USDA Foods.

Elderly nutrition project means a recipient agency selected by the State Unit on Aging to receive assistance in NSIP, which may include donated food assistance.

Eligible persons means persons in need of food assistance as a result of their:

(1) Economic status;

(2) Eligibility for a specific food assistance program; or

(3) Eligibility as survivors of a disaster or a situation of distress.

End product means a food product that contains processed donated foods.

Entitlement means the value of donated foods a distributing agency is authorized to receive in a specific program, in accordance with program legislation.

Entitlement foods means donated foods that USDA purchases and provides in accordance with levels of assistance mandated by program legislation.

FDPIR means the Food Distribution Program on Indian Reservations and the Food Distribution Program for Indian Households in Oklahoma.

Federal acceptance service means the acceptance service provided by:

(1) The applicable grading branches of the Department's Agricultural Marketing Service (AMS);

(2) The Department's Federal Grain Inspection Service; and

(3) The National Marine Fisheries Service of the U.S. Department of Commerce.

Fee-for-service means the price by pound or case representing a processor's cost of ingredients (other than donated foods), labor, packaging, overhead, and other costs incurred in the conversion of the donated food into the specified end product.

Fiscal year means the period of 12 months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

FNS means the Food and Nutrition Service of the Department of Agriculture.

Food recall means an action to remove food products from commerce when there is reason to believe the products may be unsafe, adulterated, or mislabeled. The action is taken to protect the public from products that may cause health problems or possible death.

Food service management company means a commercial enterprise, nonprofit organization, or public institution that is, or may be, contracted with by a recipient agency to manage any aspect of a recipient agency's food service, in accordance with 7 CFR part 210, 225, or 226, or, with respect to charitable institutions, in accordance with this part. To the extent that such management includes the use of donated foods, the food service management company is subject to the applicable requirements in this part. However, a school food authority participating in NSLP that performs such functions is not considered a food service management company. Also, a commercial enterprise that uses donated foods to prepare meals at a commercial facility, or to perform other activities that meet the definition of processing in this section, is considered a processor in this part, and is subject to the requirements in subpart C, and not subpart D, of this part.

Household means any of the following individuals or groups of individuals, exclusive of boarders or residents of an institution:

(1) An individual living alone;

(2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

(3) A group of individuals living together who customarily purchase and prepare meals in common for home consumption; and

(4) Other individuals or groups of individuals, as provided in FNS regulations specific to particular food assistance programs.

Household programs means CSFP, FDPIR, and TEFAP.

In-kind replacement means the replacement of a loss of donated food with the same type of food of U.S. origin, of equal or better quality as the donated food, and at least equal in value to the lost donated food.

In-State processor means a processor that has entered into agreements with distributing or recipient agencies that are located only in the State in which all of the processor's processing facilities are located.

Multi-food shipment means a shipment from a Federal storage facility that usually includes more than one type of donated food.

Multi-State processor means a processor that has entered into agreements with distributing or recipient agencies in more than one State, or that has entered into one or more agreements with distributing or recipient agencies that are located in a State other than the State in which the processor's processing facilities or business office is located.

National per-meal value means the value of donated foods provided for each reimbursable lunch served in NSLP in the previous school year, and for each reimbursable lunch and supper served in CACFP in the previous school year, as established in sections 6(c) and 17(h)(1)(B) of the Richard B. Russell National School Lunch Act ((42 U.S.C. 1755(c) and 1766(h)(1)(B)).

Nonprofit organization means a private organization with tax-exempt status under the Internal Revenue Code. Nonprofit organizations operated exclusively for religious purposes are automatically tax-exempt under the Internal Revenue Code.

Nonprofit school food service means all food service operations conducted by the school food authority principally for the benefit of schoolchildren, all of the revenue from which is used solely for the operation or improvement of such food services.

NSIP means the Nutrition Services Incentive Program administered by the DHHS ACL.

NSLP means the National School Lunch Program.

Out-of-condition donated foods means donated foods that are no longer fit for human consumption as a result of spoilage, contamination, infestation, adulteration, or damage.

Performance supply and surety bond means a written instrument issued by a surety company which guarantees performance and supply of end products by a processor under the terms of a processing contract.

Processing means a commercial enterprise's use of a commercial facility to:

(1) Convert donated foods into an end product;

(2) Repackage donated foods; or

(3) Use donated foods in the preparation of meals.

Processor means a commercial enterprise that processes donated foods at a commercial facility.

Recipient agencies means agencies or organizations that receive donated foods for distribution to eligible persons or for use in meals provided to eligible persons, in accordance with agreements with a distributing or subdistributing agency, or with another recipient agency. Local agencies in CSFP, and Indian Tribal Organizations distributing donated foods to eligible persons through FDPIR in a State in which the State government administers FDPIR, are considered recipient agencies in this part.

Recipients means persons receiving donated foods, or a meal containing donated foods, provided by recipient agencies.

Reimbursable meals means meals that meet the nutritional standards established in Federal regulations pertaining to NSLP, SFSP, or CACFP, and that are served to eligible recipients.

SAE funds means Federal funds provided to State agencies for State administrative expenses, in accordance with 7 CFR part 235.

SBP means the School Breakfast Program.

School food authority means the governing body responsible for the administration of one or more schools, and that has the legal authority to operate NSLP or be otherwise approved by FNS to operate NSLP.

School year means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

Section 4(a) means section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note), which authorizes the Department to purchase donated foods to maintain the traditional level of assistance for food assistance programs authorized by law, including, but not limited to, CSFP, FDPIR, and disaster assistance.

Section 6 means section 6 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755), which authorizes the Department to provide a specified value of donated food assistance in NSLP.

Section 14 means section 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762a), which authorizes the Department to use Section 32 or Section 416 funds to maintain the annually programmed levels of donated food assistance in child nutrition programs.

Section 27 means section 27 of the Food and Nutrition Act of 2008 (7 U.S.C. 2036), which authorizes the purchase of donated foods for distribution in TEFAP.

Section 32 means section 32 of Public Law 74–320 (7 U.S.C. 612c), which authorizes the Department to purchase primarily perishable foods to remove market surpluses, and to donate them for use in domestic food assistance programs or by charitable institutions.

Section 311 means section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a), which permits State Units on Aging to receive all or part of their NSIP grant as USDA donated foods.

Section 416 means section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431), which authorizes the Department to purchase nonperishable foods to support market prices, and to donate them for use in domestic food assistance programs or by charitable institutions.

Section 709 means section 709 of the Food and Agricultural Act of 1965 (7 U.S.C. 1446a–1), which authorizes the Department to purchase dairy products to meet authorized levels of assistance in domestic food assistance programs when such assistance cannot be met by Section 416 food purchases.

Service institution means recipient agencies that participate in SFSP.

SFSP means the Summer Food Service Program.

Similar replacement means the replacement of a loss of donated food with another type of food from the same food category (*e.g.,* dairy, grain, meat/meat alternate, vegetable, fruit, etc.) that is of U.S. origin, of equal or better quality than that type of donated food, and at least equal in value to the lost donated food.

Single inventory management means the commingling in storage of donated foods and foods from other sources, and the maintenance of a single inventory record of such commingled foods.

Situation of distress means a natural catastrophe or other event that does not meet the definition of disaster in this section, but that, in the determination of the distributing agency, or of FNS, as applicable, warrants the use of donated foods to assist survivors of such catastrophe or other event. A situation of distress may include, for example, a hurricane, flood, snowstorm, or explosion.

SNAP means the Supplemental Nutrition Assistance Program.

Split shipment means a shipment of donated foods from a vendor that is split between two or more distributing or recipient agencies, and that usually includes more than one stop-off or delivery location.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

State Unit on Aging means:

(1) The State agency that has been approved by DHHS to administer NSIP; or

(2) The Indian Tribal Organization that has been approved by DHHS to administer NSIP.

Storage facility means a publicly-owned or nonprofit facility or a commercial enterprise that stores donated foods or end products, and that may also transport such foods to another location.

Subdistributing agency means a State agency, a public agency, or a nonprofit organization selected by the distributing agency to perform one or more activities required of the distributing agency in this part, in accordance with a written agreement between the parties. A subdistributing agency may also be a recipient agency.

Substitution means:

(1) The replacement of donated foods with like quantities of domestically produced commercial foods of the same generic identity and of equal or better quality.

(2) A processor can substitute commercial product for donated food, as described in paragraph (1) of this definition, without restrictions under full substitution. The processor must return to the contracting agency, in finished end products, the same number of pounds of donated food that the processor originally received for processing under full substitution. This is the 100-percent yield requirement.

(3) A processor can substitute commercial product for donated foods, as described in paragraph (1) of this definition, with some restrictions under limited substitution. Restrictions include, but are not limited to, the prohibition against substituting for backhauled poultry product. FNS may also prohibit substitution of certain types of the same generic food. (For example, FNS may decide to permit substitution for bulk chicken but not for canned chicken.)

Summer camp means a nonprofit or public camp for children aged 18 and under.

TEFAP means The Emergency Food Assistance Program.

USDA Foods means donated foods.

USDA implementing regulations mean the following: 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; 2 CFR part 415, General Program Administrative Regulations; 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments; and 2 CFR part 418, New Restrictions on Lobbying.

Vendor means a commercial food company from which the Department purchases foods for donation.

§ 250.3 Administration at the Federal level.

(a) *Food and Nutrition Service.* Within the Department, Food and Nutrition Service (FNS) must act on behalf of the Department to administer the distribution of donated foods to distributing agencies for further distribution and use at the State level, in accordance with the requirements of this part.

(b) *Audits or inspections.* The Department, the Comptroller General of the United States, or any of their authorized representatives, may conduct audits or inspections of distributing, subdistributing, or recipient agencies, or the commercial enterprises with which they have contracts or agreements, in order to determine compliance with the requirements of this part, or with other applicable Federal regulations.

(c) *Suspension or termination.* Whenever it is determined that a distributing agency has materially failed to comply with the provisions of this part, or with other applicable Federal regulations, FNS may suspend or terminate the distribution of donated foods, or the provision of administrative funds, to the distributing agency. FNS must provide written notification of such suspension or termination of assistance, including the reasons for the action and the effective date. The distributing agency may appeal a suspension or termination of assistance if such appeal is provided for in Federal regulations applicable to a specific food assistance program (*e.g.*, as provided for in § 253.5(l) of this chapter for FDPIR). FNS may also take other actions, as appropriate, including prosecution under applicable Federal statutes.

§ 250.4 Administration at the State level.

(a) *Distributing agency.* The distributing agency, as defined in § 250.2, is responsible for ensuring compliance with the requirements in this part, and in other Federal regulations referenced in this part, in the distribution and control of donated foods. In order to receive, store, and distribute donated foods, the distributing agency must enter into a written agreement with FNS (the *Federal-State Agreement,* form FNS–74) for the distribution of donated foods in accordance with the provisions of this part and other applicable Federal regulations. The Federal-State agreement is permanent, but may be amended with the concurrence of both parties. FNS may terminate the Federal-State agreement if the distributing agency fails to meet its obligations, in accordance with § 250.3(c). Each distributing agency must also provide adequate personnel to administer the program in accordance with this part. The distributing agency may impose additional requirements related to the distribution and control of donated foods in the State, as long as such requirements are not inconsistent with the requirements in this part or other Federal regulations referenced in this part.

(b) *Subdistributing agency.* The distributing agency may enter into a written agreement with a subdistributing agency, as defined in § 250.2, to perform specific activities required of the distributing agency in this part. However, the distributing agency may not assign its overall responsibility for donated food distribution and control to a subdistributing agency or to any other organization, and may not delegate its responsibility to ensure compliance with the performance standards in § 250.22. The agreement entered into with the subdistributing agency must include the provisions in paragraph (c) of this section, and must indicate the specific activities for which the subdistributing agency is responsible.

(c) *Recipient agencies.* The distributing agency must select recipient agencies, as defined in § 250.2, to receive donated foods for distribution to eligible persons, or for use in meals provided to eligible persons, in accordance with eligibility criteria for specific programs or outlets, and must enter into a written agreement with a recipient agency prior to distribution of donated foods to it. However, for child nutrition programs, the distributing agency must enter into agreements with those recipient agencies selected by the State administering agency to participate in such programs, prior to distribution of donated foods to such recipient agencies. The distributing agency must confirm such recipient agencies' approval for participation in the appropriate child nutrition program with the State administering agency. For household programs, distributing agencies must consider the past performance of recipient agencies when approving applications for participation. Agreements with recipient agencies must include the provisions in this paragraph (c), as well as provisions required in Federal regulations applicable to specific programs (*e.g.*, agreements with local agencies in CSFP must include the provisions in § 247.4(b) of this chapter). The agreements with recipient agencies and subdistributing agencies must:

(1) Ensure compliance with the applicable requirements in this part, with other Federal regulations referenced in this part, and with the distributing agency's written agreement with FNS;

(2) Ensure compliance with all requirements relating to food safety and food recalls;

(3) Establish the duration of the agreement. The duration of the agreement may be established as permanent, but may be amended at the initiation of distributing agencies;

(4) Permit termination of the agreement by the distributing agency for failure of the recipient agency (or subdistributing agency, as applicable) to comply with its provisions or applicable requirements, upon written notification to the applicable party; and

(5) Permit termination of the agreement by either party, upon written notification to the other party, at least 60 days prior to the effective date of termination.

(d) *Procurement of services of commercial enterprises.* The distributing agency, or a recipient agency, must ensure compliance with procurement requirements in 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 416, as applicable, to obtain the services of a commercial enterprise to conduct activities relating to donated foods. The distributing agency, or a recipient agency, must also ensure compliance with other applicable Departmental regulations in such procurements—for example, a school food authority must ensure compliance with requirements in §§ 210.16 and 210.21 of this chapter, and in subpart D of this part, in procuring the services of a food service management company.

§ 250.5 Civil rights.

Distributing agencies, subdistributing agencies and recipient agencies must comply with the Department's nondiscrimination regulations (7 CFR parts 15, 15a, and 15b) and the FNS civil rights instructions to ensure that in the operation of the program no person is discriminated against on protected bases as such bases apply to each program.

■ 3. Revise subpart B to read as follows:

Subpart B—Delivery, Distribution, and Control of Donated Foods

Sec.
250.10 Availability and ordering of donated foods.
250.11 Delivery and receipt of donated food shipments.
250.12 Storage and inventory management at the distributing agency level.
250.13 Efficient and cost-effective distribution of donated foods.
250.14 Storage and inventory management at the recipient agency level.
250.15 Out-of-condition donated foods, food recalls, and complaints.
250.16 Claims and restitution for donated food losses.
250.17 Use of funds obtained incidental to donated food distribution.
250.18 Reporting requirements.
250.19 Recordkeeping requirements.
250.20 Audit requirements.
250.21 Distributing agency reviews.
250.22 Distributing agency performance standards.

§ 250.10 Availability and ordering of donated foods.

(a) *Ordering donated foods.* The distributing agency must utilize a request-driven ordering system in submitting orders for donated foods to FNS. As part of such system, the distributing agency must provide recipient agencies with the opportunity to submit input, on at least an annual basis, in determining the donated foods from the full list that are made available to them for ordering. Based on the input received, the distributing agency must ensure that the types and forms of donated foods that recipient agencies may best utilize are made available to them for ordering. The distributing agency must also ensure that donated foods are ordered and distributed only in amounts that may be utilized efficiently and without waste.

(b) *Provision of information on donated foods.* The distributing agency must provide recipient agencies, at their request, information that will assist them in ordering or utilization of donated foods, including information provided by USDA. Information provided to recipient agencies must include:

(1) The types and quantities of donated foods that they may order;

(2) Donated food specifications and nutritional value; and

(3) Procedures for the disposition of donated foods that are out-of-condition or that are subject to a food recall.

(c) *Normal food expenditures.* Section 416 donated foods must not be distributed to any recipient agencies or recipients whose normal food expenditures are reduced because of the receipt of donated foods.

§ 250.11 Delivery and receipt of donated food shipments.

(a) *Delivery.* The Department arranges for delivery of donated foods from the vendor or Federal storage facility to the distributing agency's storage facility, or to a processor with which the distributing agency has entered into a contract or agreement. The Department may also deliver donated foods directly to a recipient agency, or to a storage facility or processor with which the recipient agency has entered into a contract or agreement, with the approval of the distributing agency. The Department will make every reasonable effort to arrange deliveries of donated foods based on information obtained from distributing agencies, to the extent feasible. In accordance with § 250.2, an entity that receives a shipment of donated foods directly from a USDA vendor or a Federal storage facility is referred to as the consignee. Consignees must provide a delivery address, and other information as required by FNS, as well as update this information as necessary, to ensure foods are delivered to the correct location.

(b) *Receipt of shipments.* The distributing or recipient agency, or other consignee, must comply with all applicable Federal requirements in receiving shipments of donated foods, including procedures for the disposition of any donated foods in a shipment that are out-of-condition (as this term is defined in § 250.2), or are not in accordance with ordered amounts. The distributing or recipient agency, or other consignee, must provide notification of the receipt of donated food shipments to FNS, through electronic means, and must maintain an electronic record of receipt of all donated food shipments.

(c) *Replacement of donated foods.* The vendor is responsible for the replacement of donated foods that are delivered out-of-condition. Such responsibility extends until expiration of the vendor warranty period included in the vendor contract with USDA. In all cases, responsibility for replacement is contingent on the determination that the foods were out-of-condition at the time of delivery. Replacement must be in-kind, unless FNS approves similar replacement (the terms in-kind and similar replacement are defined in § 250.2). If FNS determines that physical replacement of donated foods is not cost-effective or efficient, FNS may:

(1) Approve payment by the vendor to the distributing or recipient agency, as appropriate, for the value of the donated foods at time of delivery (or at another value determined by FNS); or

(2) Credit the distributing agency's entitlement, as feasible.

(d) *Payment of costs relating to shipments.* The Department is responsible for payment of processing, transportation, handling, or other costs incurred up to the time of delivery of donated foods to a distributing or recipient agency, or other consignee, as the Department deems in its best interest. However, the distributing or recipient agency, or other consignee, is responsible for payment of any delivery charges that accrue as a result of such consignee's failure to comply with procedures in FNS instructions—*e.g.,* failure to provide for the unloading of a shipment of donated foods within a designated time period.

(e) *Transfer of title.* Title to donated foods transfers to the distributing or recipient agency, as appropriate, upon acceptance of the donated foods at the time and place of delivery. Notwithstanding transfer of title, distributing and recipient agencies must ensure compliance with the requirements of this part in the distribution, control, and use of donated foods.

§ 250.12 Storage and inventory management at the distributing agency level.

(a) *Safe storage and control.* The distributing agency or subdistributing agency (which may include commercial storage facilities under contract with either the distributing agency or subdistributing agency, as applicable), must provide facilities for the storage and control of donated foods that protect against theft, spoilage, damage, or other loss. Accordingly, such storage facilities must maintain donated foods in sanitary conditions, at the proper temperature and humidity, and with adequate air circulation. The distributing agency must ensure that storage facilities comply with all Federal, State, or local requirements relative to food safety and health and procedures for responding to a food recall, as applicable, and obtain all required health inspections.

(b) *Inventory management.* The distributing agency must ensure that donated foods at all storage facilities used by the distributing agency (or by a subdistributing agency) are stored in a manner that permits them to be distinguished from other foods, and must ensure that a separate inventory record of donated foods is maintained. The distributing agency's system of inventory management must ensure that donated foods are distributed in a timely manner and in optimal condition. On an annual basis, the distributing agency must conduct a physical review of donated food inventories at all storage facilities used by the distributing agency (or by a subdistributing agency), and must reconcile physical and book inventories of donated foods. The distributing agency must report donated food losses to FNS, and ensure that restitution is made for such losses.

(c) *Inventory limitations.* The distributing agency is subject to the following limitations in the amount of donated food inventories on-hand, unless FNS approval is obtained to maintain larger inventories:

(1) For TEFAP, NSLP and other child nutrition programs, inventories of each category of donated food may not exceed an amount needed for a six-month period, based on an average amount of donated foods utilized in that period; and

(2) For CSFP and FDPIR, inventories of each category of donated food in the food package may not exceed an amount needed for a three-month period, based on an average amount of donated food that the distributing agency can reasonably utilize in that period to meet CSFP caseload or FDPIR average participation.

(d) *Inventory protection.* The distributing agency must obtain insurance to protect the value of donated foods at its storage facilities. The amount of such insurance must be at least equal to the average monthly value of donated food inventories at such facilities in the previous fiscal year. The distributing agency must also ensure that the following entities obtain insurance to protect the value of their donated food inventories, in the same amount required of the distributing agency in this paragraph (d):

(1) Subdistributing agencies;

(2) Recipient agencies in household programs that have an agreement with the distributing agency or subdistributing agency to store and distribute foods (except those recipient agencies which maintain inventories with a value of donated foods that do not exceed a defined threshold, as determined in FNS policy); and

(3) Commercial storage facilities under contract with the distributing agency or with an agency identified in paragraph (d)(1) or (2) of this section.

(e) *Transfer of donated foods.* The distributing agency may transfer donated foods from its inventories to another distributing agency, or to another program, in order to ensure that such foods may be utilized in a timely manner and in optimal condition, in accordance with this part. However, the distributing agency must request FNS approval. FNS may also require a distributing agency to transfer donated foods at the distributing agency's storage facilities or at a processor's facility, if inventories of donated foods are excessive or may not be efficiently utilized. If there is a question of food safety, or if directed by FNS, the distributing agency must obtain an inspection of donated foods by State or local health authorities, as necessary, to ensure that the donated foods are still safe and not out-of-condition before transferring them. The distributing agency is responsible for meeting any transportation or inspection costs incurred, unless it is determined by FNS that the transfer is not the result of negligence or improper action on the part of the distributing agency. The distributing agency must maintain a record of all transfers from its inventories, and of any inspections related to such transfers.

(f) *Commercial storage facilities or carriers.* The distributing agency may obtain the services of a commercial storage facility to store and distribute donated foods, or a carrier to transport donated foods, but must do so in compliance with procurement requirements in 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 416. The distributing agency must enter into a written contract with a commercial storage facility or carrier, which may not exceed five years in duration, including any extensions or renewals. The contract must include applicable provisions required by Federal statutes and executive orders listed in 2 CFR part 200, appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and USDA implementing regulations at 2 CFR parts 400 and 416. The contract must also include, as applicable to a storage facility or carrier, provisions that:

(1) Assure storage, management, and transportation of donated foods in a manner that properly safeguards them against theft, spoilage, damage, or other loss, in accordance with the requirements in this part;

(2) Assure compliance with all Federal, State, or local requirements relative to food safety and health, including required health inspections, and procedures for responding to a food recall;

(3) Assure storage of donated foods in a manner that distinguishes them from other foods, and assure separate inventory recordkeeping of donated foods;

(4) Assure distribution of donated foods to eligible recipient agencies in a timely manner, in optimal condition, and in amounts for which such recipient agencies are eligible;

(5) Include the amount of insurance coverage obtained to protect the value of donated foods;

(6) Permit the performance of on-site reviews of the storage facility by the distributing agency, the Comptroller General, the Department of Agriculture, or any of its duly authorized representatives, in order to determine compliance with requirements in this part;

(7) Establish the duration of the contract, and provide for extension or renewal of the contract only upon fulfillment of all contract provisions;

(8) Provide for expeditious termination of the contract by the distributing agency for noncompliance with its provisions; and

(9) Provide for termination of the contract by either party for other cause, after written notification of such intent at least 60 days prior to the effective date of such action.

§ 250.13 Efficient and cost-effective distribution of donated foods.

(a) *Direct shipments.* The distributing agency must ensure that the distribution of donated foods is conducted in the most efficient and cost-effective manner, and, to the extent practical, in accordance with the specific needs and preferences of recipient agencies. In meeting this requirement, the distributing agency must, to the extent practical, provide for:

(1) Shipments of donated foods directly from USDA vendors to recipient agencies, including two or more recipient agencies acting as a collective unit (such as a school co-op), or to the commercial storage facilities of such agencies;

(2) Shipments of donated foods directly from USDA vendors to processors for processing of donated foods and sale of end products to recipient agencies, in accordance with subpart C of this part; and

(3) The use of split shipments, as defined in § 250.2, in arranging for delivery of donated foods to recipient agencies that cannot accept a full truckload.

(b) *Distributing agency storage and distribution charge.* (1) If a distributing agency determines that direct shipments of donated foods, as described in paragraph (a) of this section, are impractical, it must provide for the storage of donated foods at the distributing agency level, and subsequent distribution to recipient agencies, in the most efficient and cost-effective manner possible. The distributing agency must use a commercial storage facility, in accordance with § 250.12(f), if the use of such system is determined to be more efficient and cost-effective than other available methods.

(2) The distributing agency must utilize State Administrative Expense (SAE) funds in child nutrition programs, as available, to meet the costs of storing and distributing donated foods for school food authorities or other recipient agencies in child nutrition programs, and administrative costs related to such activities, in accordance with 7 CFR part 235. If SAE funds, or any other Federal or State funds received for such purpose, are insufficient to fully meet the distributing agency's costs of storing and distributing donated foods, and related administrative costs (*e.g.,* salaries of employees engaged in such activities), the distributing agency may require school food authorities or other recipient agencies in child nutrition programs to pay a distribution charge, as defined in § 250.2, to help meet such costs. The distribution charge may cover only allowable costs, in accordance with 2 CFR part 200, subpart E, and USDA implementing regulations at 2 CFR part 400. The distributing agency must maintain a record of costs incurred in storing and distributing donated foods and related administrative costs, and the source of funds used to pay such costs.

(c) *FNS approval of amount of State distributing agency distribution charge to school food authorities and other recipient agencies in child nutrition programs.* In determining the amount of a new distribution charge, or in increasing the amount (except for normal inflationary adjustments) or reducing the level of service provided once a distribution charge is established, the distributing agency must request FNS approval prior to implementation. Such requirement also applies to the distribution charge imposed by a commercial storage facility under contract with the distributing agency. The request for approval must be submitted to FNS at least 90 days in advance of its projected implementation, and must include justification of the newly established amount, or any increased charge or reduction in the level of service provided under an established distribution charge, and the specific costs covered under the distribution charge (*e.g.,* storage, delivery, or administrative costs).

(d) *FNS review authority.* FNS may reject the distributing agency's proposed new, or changes to an existing, distribution charge for school food authorities and other recipient agencies in child nutrition programs if FNS determines that the charge would not provide for distribution of donated foods in the most efficient and cost-effective manner, or may otherwise impact recipient agencies negatively. In such case, the distributing agency would be required to adjust the proposed amount or the level of service provided in its distribution charge, or consider other distribution options. FNS may also require the distributing agency to submit documentation to justify the efficiency and cost-effectiveness of its storage and distribution system at other times, and may require the distributing agency to re-evaluate such system in order to ensure compliance with the requirements in this part.

§ 250.14 Storage and inventory management at the recipient agency level.

(a) *Safe storage and control.* Recipient agencies must provide facilities for the storage and control of donated foods that protect against theft, spoilage, damage, or other loss. Accordingly, such storage facilities must maintain donated foods in sanitary conditions, at the proper temperature and humidity, and with adequate air circulation. Recipient agencies must ensure that storage facilities comply with all Federal, State, or local requirements relative to food safety and health and procedures for responding to a food recall, as applicable, and obtain all required health inspections.

(b) *Inventory management—household programs.* Recipient agencies in household programs must store donated foods in a manner that permits them to be distinguished from other foods in storage, and must maintain a separate inventory record of donated foods. Such recipient agencies' system of inventory management must ensure that donated foods are distributed to recipients in a timely manner that permits use of such foods while still in optimal condition. Such recipient agencies must notify the distributing agency of donated food losses and take further actions with respect to such food losses, as directed by the distributing agency.

(c) *Inventory management—child nutrition programs and charitable institutions.* Recipient agencies in child nutrition programs, and those receiving donated foods as charitable institutions, in accordance with § 250.67, are not required to store donated foods in a manner that distinguishes them from purchased foods or other foods, or to maintain a separate inventory record of donated foods—*i.e.,* they may utilize single inventory management, as defined in § 250.2. For such recipient agencies, donated foods are subject to the same safeguards and effective management practices as other foods. Accordingly, recipient agencies in child nutrition programs and those receiving donated foods as charitable institutions (regardless of the inventory management system utilized), are not required to separately monitor and report donated food use, distribution, or loss to the distributing agency, unless there is evidence indicating that donated food loss has occurred as a result of theft or fraud.

(d) *Transfer of donated foods to another recipient agency.* A recipient agency operating a household program must request approval from the distributing agency to transfer donated foods at its storage facilities to another recipient agency. The distributing agency may approve such transfer to another recipient agency in the same household program (*e.g.,* the transfer of TEFAP foods from one food pantry to another) without FNS approval. However, the distributing agency must receive FNS approval to permit a recipient agency in a household program to transfer donated foods to a recipient agency in a different program (*e.g.,* the transfer of TEFAP foods from a food pantry to a CSFP local agency), even if the same recipient agency administers both programs. A recipient agency operating a child nutrition program, or receiving donated foods as a charitable institution, in accordance with § 250.67, may transfer donated foods to another recipient agency or charitable organization without approval from the distributing agency or FNS. However, the recipient agency must still maintain records of donated food inventories.

(e) *Commercial storage facilities.* Recipient agencies may obtain the services of commercial storage facilities to store and distribute donated foods, but must do so in compliance with procurement requirements in 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 416, as applicable. Recipient agencies must ensure that commercial storage facilities comply with all of the applicable requirements in this section regarding the storage and inventory management of donated foods.

§ 250.15 Out-of-condition donated foods, food recalls, and complaints.

(a) *Out-of-condition donated foods at the distributing agency level.* The distributing agency must ensure that donated foods that are out-of-condition, as defined in § 250.2, at any of its storage facilities are removed, destroyed, or otherwise disposed of, in accordance with FNS instruction and State or local requirements pertaining to food safety and health. The distributing agency must obtain an inspection of donated foods by State or local health authorities to determine their safety and condition, as necessary, or as directed by FNS. Out-of-condition donated foods may be sold (*e.g.,* to a salvage company), if permitted by FNS and State or local laws or regulations.

(b) *Out-of-condition donated foods at the recipient agency level.* Recipient agencies in household programs must report out-of-condition donated foods at their storage facilities to the distributing agency, in accordance with § 250.14(b), and must ensure that such donated foods are removed, destroyed, or otherwise disposed of, in accordance with FNS instruction and State or local requirements pertaining to food safety and health. The distributing agency must ensure that such recipient agencies obtain an inspection of donated foods by State or local health authorities to determine their safety and condition, as necessary, or as directed by FNS. For charitable institutions, in accordance with § 250.67, and recipient agencies in child nutrition programs, donated foods must be treated as other foods when safety is in question. Consequently, such recipient agencies must comply with State or local requirements in determining the safety of foods (including donated foods), and in their destruction or other disposition. However, they are not required to report such actions to the distributing agency.

(c) *Food recalls.* The distributing or recipient agency, as appropriate, must follow all applicable Federal, State or local requirements for donated foods subject to a food recall, as this term is defined in § 250.2. Further, in the event of a recall, Departmental guidance is provided, including procedures or instructions for all parties in responding to a food recall, replacement of recalled donated foods, and reimbursement of specific costs incurred as a result of such actions.

(d) *Complaints relating to donated foods.* The distributing agency must inform recipient agencies of the preferred method of receiving complaints regarding donated foods. Complaints received from recipients, recipient agencies, or other entities relating to donated foods must be resolved in an expeditious manner, and in accordance with applicable requirements in this part. However, the distributing agency may not dispose of any donated food that is the subject of a complaint prior to guidance and authorization from FNS. Any complaints regarding product quality or specifications, or suggested product improvements, must be submitted to FNS through the established FNS donated foods complaint system for tracking purposes. If complaints may not be resolved at the State level, the distributing agency must provide information regarding the complaint to FNS. The distributing agency must maintain a record of its investigations and other actions with respect to complaints relating to donated foods.

§ 250.16 Claims and restitution for donated food losses.

(a) *Distributing agency responsibilities.* The distributing agency must ensure that restitution is made for the loss of donated foods, or for the loss or improper use of funds provided for, or obtained as an incident of, the distribution of donated foods. The distributing agency must identify, and seek restitution from, parties responsible for the loss, and implement corrective actions to prevent future losses.

(b) *FNS claim actions.* FNS may initiate and pursue claims against the distributing agency or other entities for the loss of donated foods, or for the loss or improper use of funds provided for, or obtained as an incident of, the distribution of donated foods. FNS may also initiate and pursue claims against the distributing agency for failure to take required claim actions against other parties. FNS may, on behalf of the Department, compromise, forgive, suspend, or waive a claim. FNS may, at its option, require assignment to it of any claim arising from the distribution of donated foods.

§ 250.17 Use of funds obtained incidental to donated food distribution.

(a) *Distribution charge.* The distributing agency must use funds obtained from the distribution charge imposed on recipient agencies in child nutrition programs, in accordance with § 250.13(b), to meet the costs of storing and distributing donated foods or related administrative costs, consistent with the limitations on the use of funds provided under a Federal grant in 2 CFR part 200, subparts D and E, and USDA implementing regulations at 2 CFR parts 400 and 416. The distributing agency must maintain such funds in an operating account, separate from other funds obtained incidental to donated food distribution. The amount of funds maintained at any time in the operating account may not exceed the distributing agency's highest expenditure from that account over any three-month period in the previous school or fiscal year, unless the distributing agency receives FNS approval to maintain a larger amount of funds in such account. Unless such approval is granted, funds in excess of the established limit must be used to reduce the distribution charge imposed on recipient agencies, or to provide appropriate reimbursement to such agencies. The distributing agency may not use funds obtained from the distribution charge to purchase foods to replace donated food losses or to pay claims to make restitution for donated food losses.

(b) *Processing and food service management company contracts.* School food authorities must use funds obtained from processors in processing of donated foods into end products (*e.g.*, through rebates for the value of such donated foods), or from food service management companies in crediting for the value of donated foods received, in support of the nonprofit school food service, in accordance with § 210.14 of this chapter. Other recipient agencies must use such funds in accordance with the requirements in paragraph (c) of this section.

(c) *Claims and other sources.* The distributing agency must ensure that funds collected in payment of claims for donated food losses are used only for the payment of expenses of the food distribution program. The first priority for the use of funds collected in a claim for the loss of donated foods is the purchase of replacement foods for use in the program in which the loss occurred. If the purchase of replacement foods is not feasible, funds collected in a claim for the loss of donated foods must be used to pay allowable administrative costs incurred in the storage and distribution of donated foods. The distributing agency, or recipient agency, must use funds obtained from sources incidental to donated food distribution (except as otherwise indicated in this section) to pay administrative costs incurred in the storage and distribution of donated foods, consistent with the limitations on the use of funds provided under a Federal grant in 2 CFR part 200, subparts D and E, and USDA implementing regulations at 2 CFR parts 400 and 416. The distributing agency must maintain funds obtained from claims and other sources included in this paragraph (c) in a donated food account (separate from the operating account maintained in accordance with paragraph (a) of this section), and must obtain FNS prior approval for any single deposit into, or expenditure from, such account in excess of $25,000. Distributing and recipient agencies must maintain records of funds obtained and expended in accordance with this paragraph (c). Examples of funds applicable to the provisions in this paragraph (c) include funds accrued from:

(1) The salvage of out-of-condition donated foods.

(2) The sale of donated food containers, pallets, or packing materials.

(3) Payments by processors for failure to meet processing yields or other cause.

(d) *Prohibitions.* The distributing agency may not use funds obtained incidental to donated food distribution to meet State matching requirements for Federal administrative funds provided in household programs, or in place of State Administrative Expense (SAE) funds provided in accordance with 7 CFR part 235.

(e) *Buy American.* When funds obtained in accordance with this section are used to purchase foods in the commercial market, a distributing or recipient agency in the continental United States, and in Hawaii, must, to the maximum extent practical, purchase only domestic foods or food products. Such requirement is also applicable to food purchases made with the cash-in-lieu-of-donated foods provided in NSLP and CACFP, in accordance with §§ 250.56(e) and 250.61(c). For the purposes of this section, domestic foods or food products are:

(1) Agricultural commodities that are produced in the United States; or

(2) Food products that are processed in the United States substantially using agricultural commodities that are produced in the United States.

§ 250.18 Reporting requirements.

(a) *Inventory and distribution of donated foods.* The distributing agency must submit to FNS reports relating to the inventory and distribution of donated foods in this paragraph (a) or in other regulations applicable to specific programs. Such reports must be submitted in accordance with the timeframes established for each respective form. For donated foods received in FDPIR, the distributing agency must submit form FNS–152, *Monthly Distribution of Donated Foods to Family Units.* For donated foods received in TEFAP, NSLP, or other child nutrition programs, the distributing agency must submit form FNS–155, the *Inventory Management Register.*

(b) *Processor performance reports.* Processors must submit monthly performance reports to the distributing agency, in accordance with § 250.30(m). Such reports must include the information listed in § 250.30(m).

(c) *Disasters and situations of distress.* The distributing agency must submit to FNS a report of the types and amounts of donated foods used from distributing or recipient agency storage facilities in disasters and situations of distress, and a request for replacement of such foods, using electronic form FNS–292A, *Report of Commodity Distribution for Disaster Relief,* in accordance with §§ 250.69 and 250.70. The report must be submitted within 45 days of the termination of such assistance.

(d) *Other information.* The distributing agency must submit other information, as requested by FNS, in order to ensure compliance with requirements in this part. For example, FNS may require the distributing agency to submit information with respect to its assessment of the distribution charge, or to justify the efficiency and cost-effectiveness of its distribution system, in accordance with § 250.13(c) and (d).

§ 250.19 Recordkeeping requirements.

(a) *Required records.* Distributing agencies, recipient agencies, and other entities must maintain records of agreements and contracts, reports, audits, and claim actions, funds obtained as an incident of donated food distribution, and other records specifically required in this part or in other Departmental regulations, as applicable. In addition, distributing agencies must keep a record of the value of donated foods each of its school food authorities receives, in accordance with § 250.58(e), and records to demonstrate compliance with the professional standards for distributing agency directors established in § 235.11(g). Processors must also maintain records documenting the sale of end products to recipient agencies, including the sale of such end products by distributors, and must submit monthly performance reports, in accordance with § 250.30(m). Specific recordkeeping requirements relating to the use of donated foods in contracts with food service management companies are included in § 250.54. Failure of the distributing agency, recipient agency, processor, or other entity to comply with recordkeeping requirements must be considered prima facie evidence of improper distribution or loss of donated foods and may result in a claim against such party for the loss or misuse of donated foods, in accordance with § 250.16, or in other sanctions or corrective actions.

(b) *Retention of records.* Records relating to requirements for donated foods must be retained for a period of three years from the close of the fiscal or school year to which they pertain. However, records pertaining to claims or audits that remain unresolved in this period of time must be retained until such actions have been resolved.

§ 250.20 Audit requirements.

(a) *Requirements for distributing and recipient agencies.* Audit requirements for State or local government agencies and nonprofit organizations that receive Federal awards or grants (including distributing and recipient agencies under this part) are included in 2 CFR part 200, subpart F and appendix XI, Compliance Supplement, and USDA implementing regulations at 2 CFR part 400. In accordance with such regulations, the value of Federal grants or awards expended in a fiscal year determine if the distributing or recipient agency is required to obtain an audit in that year. The value of donated foods must be considered as part of the Federal grants or awards in determining if an audit is required. FNS provides guidance for distributing and recipient agencies in valuing donated foods for audit purposes, and in determining whether an audit must be obtained.

(b) *Requirements for processors.* In-State processors must obtain an independent certified public accountant (CPA) audit in the first year that they receive donated foods for processing, while multi-State processors must obtain such an audit in each of the first two years that they receive donated foods for processing. After this initial requirement period, in-State and multi-State processors must obtain an independent CPA audit at a frequency determined by the average value of donated foods received for processing per year, as indicated in this paragraph (b). The value of donated foods used in determining if an audit is required must be the contract value of the donated foods, as defined in § 250.2. The audit must determine that the processor's performance is in compliance with the requirements in this part, and must be conducted in accordance with procedures in the FNS Audit Guide for Processors. All processors must pay for audits required in this paragraph (b). An in-State or multi-State processor must obtain an audit:

(1) Annually, if it receives, on average, more than $5,000,000 in donated foods for processing per year;

(2) Every two years, if it receives, on average, between $1,000,000 and $5,000,000 in donated foods for processing per year; or

(3) Every three years, if it receives, on average, less than $1,000,000 in donated foods for processing per year.

(c) *Post-audit actions required of processors.* In-State processors must submit a copy of the audit to the distributing agency for review by December 31st of each year in which an audit is required. The distributing agency must ensure that in-State processors provide a corrective action plan with timelines for correcting deficiencies identified in the audit, and must ensure that such deficiencies are corrected. Multi-State processors must submit a copy of the audit, and a corrective action plan with timelines for correcting deficiencies identified in the audit, as appropriate, to FNS for review by December 31st of each year in which an audit is required. FNS may conduct an audit or investigation of a processor to ensure correction of deficiencies, in accordance with § 250.3(b).

(d) *Failure to meet audit requirements.* If a distributing agency or recipient agency fails to obtain the required audit, or fails to correct deficiencies identified in the audit, FNS may withhold, suspend, or terminate the Federal award. If an in-State processor fails to obtain the required audit, or fails to correct deficiencies identified in the audit, a distributing or recipient agency may terminate the processing agreement, and may not extend or renew such an agreement. Additionally, FNS may prohibit the further distribution of donated foods to such processor. If a multi-State processor fails to obtain a required audit, or fails to correct deficiencies identified in the audit, FNS may terminate the processing agreement. Additionally, FNS may prohibit the further distribution of donated foods to such processor.

§ 250.21 Distributing agency reviews.

(a) *Scope of review requirements.* The distributing agency must ensure that subdistributing agencies, recipient agencies, and other entities comply with applicable requirements in this part, and in other Federal regulations, through the on-site reviews required in paragraph (b) of this section, and the review of required reports or audits. However, the distributing agency is not responsible for the review of school food authorities and other recipient agencies in child nutrition programs. The State administering agency is responsible for the review of such recipient agencies, in accordance with review requirements of part 210 of this chapter.

(b) *On-site reviews.* The distributing agency must conduct an on-site review of:

(1) Charitable institutions, whenever the distributing agency identifies actual or probable deficiencies in the use of donated foods by such institutions, through audits, investigations, complaints, or any other information;

(2) Storage facilities at the distributing agency level (including commercial storage facilities under contract with the distributing or subdistributing agency), on an annual basis; and

(3) Subdistributing and recipient agencies in CSFP, TEFAP, and FDPIR, in accordance with 7 CFR parts 247, 251, and 253, respectively.

(c) *Identification and correction of deficiencies.* The distributing agency must inform each subdistributing agency, recipient agency, or other entity of any deficiencies identified in its reviews, and recommend specific actions to correct such deficiencies. The distributing agency must ensure that such agencies or entities implement corrective actions to correct deficiencies in a timely manner.

§ 250.22 Distributing agency performance standards.

(a) *Performance standards.* The distributing agency must meet the basic performance standards included in this paragraph (a) in the ordering, distribution, processing, if applicable, and control of donated foods. Some of the performance standards apply only to distributing agencies that distribute donated foods in NSLP or other child nutrition programs, as indicated. However, the identification of specific performance standards does not diminish the responsibility of the distributing agency to meet other requirements in this part. In meeting basic performance standards, the distributing agency must:

(1) Provide recipient agencies with information on donated food availability, assistance levels, values, product specifications, and processing options, as requested;

(2) Implement a request-driven ordering system, in accordance with

§ 250.10(a), and, for child nutrition programs, § 250.58(a);

(3) Offer school food authorities in NSLP, at a minimum, the commodity offer value of donated foods, in accordance with § 250.58;

(4) Provide for the storage, distribution, and control of donated foods in accordance with all Federal, State, or local requirements relating to food safety and health;

(5) Provide for the distribution of donated foods in the most efficient and cost-effective manner, including, to the extent practical, direct shipments from vendors to recipient agencies or processors, and the use of split shipments;

(6) Use SAE funds, or other Federal or State funds, as available, in paying State storage and distribution costs for child nutrition programs, and impose a distribution charge on recipient agencies in child nutrition programs only to the extent that such funds are insufficient to meet applicable costs;

(7) Provide for the processing of donated foods, at the request of school food authorities, in accordance with subpart C of this part, including the testing of end products with school food authorities, and the solicitation of acceptability input, when procuring end products on behalf of school food authorities or otherwise limiting the procurement of end products; and

(8) Provide recipient agencies information regarding the preferred method for submission of donated foods complaints to the distributing agency and act expeditiously to resolve submitted complaints.

(b) *Corrective action plan.* The distributing agency must submit a corrective action plan to FNS whenever it is found to be substantially out of compliance with the performance standards in paragraph (a) of this section, or with other requirements in this part. The plan must identify the corrective actions to be taken, and the timeframe for completion of such actions. The plan must be submitted to FNS within 60 days after the distributing agency receives notification from FNS of a deficiency.

(c) *Termination or suspension.* FNS may terminate or suspend all, or part, of the distributing agency's participation in the distribution of donated foods, or in a food distribution program, for failure to comply with requirements in this part, with other applicable Federal regulations, or with its written agreement with FNS. FNS may also take other actions, as appropriate, including prosecution under applicable Federal statutes.

Subpart C—Processing and Labeling of Donated Foods

■ 4. In § 250.30:

■ a. Remove all references to "FNSRO" and add in its place "FNS Regional Office".

■ b. Amend paragraph (b)(2) by removing the reference "§ 250.12(b)" and adding in its place the reference "§ 250.4(c)".

■ c. Amend paragraph (b)(2)(i) by removing the words "as defined in § 250.3" and adding in their place the words "in accordance with paragraph (d) of this section".

■ d. Revise paragraph (c)(1)(vi) and remove the undesignated paragraph following paragraph (c)(1)(vi).

■ e. Amend paragraphs (c)(4)(iii) and (f)(1) by removing the reference "§ 250.3" and adding in its place the reference "§ 250.2".

■ f. Revise paragraphs (c)(4)(viii)(G) and (c)(4)(xi).

■ g. Remove paragraph (c)(4)(xiv) and redesignate paragraphs (c)(4)(xv) through (xviii) as paragraphs (c)(4)(xiv) through (xvii).

■ h. Revise paragraphs (d)(1)(i) and (e)(1)(i).

■ i. Remove the second and third sentences of paragraph (d)(1)(iii).

■ j. Amend paragraph (f)(2) by removing the reference "§ 250.16" and adding in its place the reference "§ 250.19".

■ k. Amend paragraph (f)(3)(vii) by removing the reference "§ 250.16(a)(4)" and adding in its place the reference "§ 250.19(a)".

■ l. Amend paragraph (j)(3) by removing the reference "FNS Instruction 410–1, Non-Audit Claims, Food Distribution Program" and adding in its place the reference "§ 250.17(c)".

■ m. Remove the last sentence of paragraph (k)(3).

■ n. Remove paragraphs (m)(1)(vii) and (viii) and redesignate paragraph (m)(1)(ix) as paragraph (m)(1)(vii).

■ o. Revise the second sentence and add a sentence following the second sentence of paragraph (n)(3).

■ p. Remove paragraph (n)(4) and redesignate paragraph (n)(5) as paragraph (n)(4).

■ q. Remove paragraphs (o), (q), and (r) and redesignate paragraphs (p), (s), and (t) as paragraphs (o), (p), and (q), respectively.

The revisions read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(c) * * *

(1) * * *

(vi)(A) The ability of the processor to meet the terms and conditions set forth in the regulations.

(B) These criteria will be reviewed by the appropriate FNS Regional Office during the management evaluation review of the distributing agency. Distributing agencies and subdistributing agencies which enter into contracts on behalf of recipient agencies but which do not limit the types of end products which can be sold or the number of processors which can sell end products within the State are not required to follow the selection criteria. In addition to utilizing these selection criteria, when a contracting agency enters into a contract both for the processing of donated food and the purchase of the end products produced from the donated food, the procurement standards set forth in 2 CFR part 200, subpart D and appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and USDA implementing regulations at 2 CFR parts 400 and 416 must be followed. Recipient agencies which purchase end products produced under Statewide agreements are also required to comply with 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 416. Contracting agencies shall not enter into contracts with processors which cannot demonstrate the ability to meet the terms and conditions of the regulations and the distributing agency agreements; furnish prior to the delivery of any donated foods for processing, a performance bond, an irrevocable letter of credit or an escrow account in an amount sufficient to protect the contract value of donated food on hand and on order; demonstrate the ability to distribute end products to eligible recipient agencies; provide a satisfactory record of integrity, business ethics and performance and provide adequate storage.

* * * * *

(4) * * *

(viii) * * *

(G) Meet the requirements of § 250.19 in maintaining records pertaining to the receipt, distribution, and control of donated foods, and the sale of end products;

* * * * *

(xi) Meet the requirements in § 250.20(b) and (c) in obtaining an independent certified public accountant audit, and in performing post-audit actions;

* * * * *

(d) * * *

(1) * * *

(i) A refund system in which the processor provides a payment to the recipient agency in the amount of the contract value of the donated food contained in the end product;

* * * * *

(e) * * *

(1) * * *

(i) A refund system in which the processor provides a payment to the recipient agency in the amount of the contract value of the donated food contained in the end product;

* * * * *

(n) * * *

(3) * * * As a part of the annual reconciliation, the distributing agency must ensure that a processor with excessive inventories of donated foods reduces such inventories. However, if this action is not practical, the distributing agency must require the processor to pay for the donated foods held in excess of allowed levels, at the replacement value of the donated foods. * * *

* * * * *

Subpart D—Donated Foods in Contracts With Food Service Management Companies

■ 5. In § 250.50:

■ a. Revise the second sentence of paragraph (a).

■ b. Amend paragraph (c) by removing the reference "CFR parts 3016 or 3019" and adding in its place the reference "2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR parts 400 and 416".

The revision reads as follows:

§ 250.50 Contract requirements and procurement.

(a) * * * The contract must ensure that all donated foods received for use by the recipient agency in the school or fiscal year, as applicable, are used in the recipient agency's food service, or that commercially purchased foods are used in place of such donated foods only in accordance with the requirements in § 250.51(d). * * *

* * * * *

■ 6. In § 250.51, revise paragraph (d) to read as follows:

§ 250.51 Crediting for, and use of, donated foods.

* * * * *

(d) *Use of donated foods.* The food service management company must use all donated beef, pork, and all processed end products, in the recipient agency's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the recipient agency's food service (unless the contract specifically stipulates that the donated foods, and not such commercial substitutes, be used).

■ 7. Revise § 250.52 to read as follows:

§ 250.52 Storage and inventory management of donated foods.

(a) *General requirements.* The food service management company must meet the requirements for the safe storage and control of donated foods in § 250.14(a).

(b) *Storage and inventory with commercially purchased foods.* The food service management company may store and inventory donated foods together with foods it has purchased commercially for the school food authority's use (unless specifically prohibited in the contract). It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in § 250.51(d)—*i.e.,* use all donated beef and pork, and all end products in the food service, and use all other donated foods or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the food service. Additionally, under cost-reimbursable contracts, the food service management company must ensure that its system of inventory management does not result in the recipient agency being charged for donated foods.

(c) *Disposition of donated foods and credit reconciliation upon termination of the contract.* When a contract terminates, and is not extended or renewed, the food service management company must return all unused donated beef, pork, and processed end products, and must, at the recipient agency's discretion, return other unused donated foods. The recipient agency must ensure that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year, as applicable.

■ 8. In § 250.53, revise paragraph (a)(5) to read as follows:

§ 250.53 Contract provisions.

(a) * * *

(5) A statement that the food service management company will use all donated beef and pork products, and all processed end products, in the recipient agency's food service;

* * * * *

Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs

■ 9. In § 250.58, revise paragraphs (a) and (e) to read as follows:

§ 250.58 Ordering donated foods and their provision to school food authorities.

(a) *Ordering and distribution of donated foods.* The distributing agency must ensure that school food authorities are able to submit donated food orders through the FNS electronic donated foods ordering system, or through a comparable electronic food ordering system. The distributing agency must ensure that all school food authorities have the opportunity to provide input at least annually in determining the donated foods from the full list that are made available to them for ordering in the FNS electronic donated foods ordering system or other comparable electronic ordering system. The distributing agency must ensure distribution to school food authorities of all such ordered donated foods that may be distributed to them in a cost-effective manner (including the use of split shipments, as necessary), and that they may utilize efficiently and without waste.

* * * * *

(e) *Donated food value in crediting.* In meeting the commodity offer value of donated foods for the school food authority, the distributing agency must use the cost-per-pound donated food prices posted annually by USDA, the most recently published cost-per-pound price in the USDA donated foods catalog, and/or a rolling average of the USDA prices (average cost per pound). The distributing agency must credit the school food authority using the USDA purchase price (cost-per-pound), and update the price at least semi-annually to reflect the most recent USDA purchase price.

■ 10. Revise § 250.59 to read as follows:

§ 250.59 Storage, control, and use of donated foods.

(a) *Storage and inventory management.* The distributing agency must ensure compliance with requirements in §§ 250.12 and 250.13 in order to ensure the safe and effective storage and inventory management of donated foods, and their efficient and cost-effective distribution to school food authorities. The school food authority must ensure compliance with requirements in § 210.13 of this chapter and §§ 250.13 and 250.14 to ensure the safe and sanitary storage, inventory management, and use of donated foods and purchased foods. In accordance with § 250.14(c), the school food authority may commingle donated foods and purchased foods in storage and maintain a single inventory record of such commingled foods, in a single inventory management system.

(b) *Use of donated foods in the nonprofit school food service.* The school food authority must use donated foods, as much as is practical, in the lunches served to schoolchildren, for which they receive an established per-meal value of donated food assistance each school year. However, the school food authority may also use donated foods in other activities of the nonprofit school food service. Revenues received from such activities must accrue to the school food authority's nonprofit school food service account, in accordance with § 210.14 of this chapter. Some examples of such activities in which donated foods may be used include:

(1) School breakfasts or other meals served in child nutrition programs;

(2) A la carte foods sold to schoolchildren;

(3) Meals served to adults directly involved in the operation and administration of the nonprofit school food service, and to other school staff; and

(4) Training in nutrition, health, food service, or general home economics instruction for students.

(c) *Use of donated foods outside of the nonprofit school food service.* The school food authority should not use donated foods in meals or other activities that do not benefit primarily schoolchildren, such as banquets or catered events. However, as their use in such activities may not always be avoided (*e.g.,* if donated foods are commingled with purchased foods in a single inventory management system), the school food authority must ensure reimbursement to the nonprofit school food service for the value of donated foods used in such activities. When such reimbursement may not be based on actual usage of donated foods (*e.g.,* in a single inventory management system), the school food authority must establish an alternate method of reimbursement—*e.g.,* by including the current per-meal value of donated food assistance in the price charged for the meal or other activity.

(d) *Use of donated foods in a contract with a food service management company.* When the school food authority contracts with a food service management company to conduct the food service, in accordance with § 210.16 of this chapter, it must ensure compliance with requirements in subpart D of this part, which address the treatment of donated foods under such contract. The school food authority must also ensure compliance with the use of donated foods in paragraphs (b) and (c) of this section under its contract with a food service management company.

(e) *School food authorities acting as a collective unit.* Two or more school food authorities may conduct activities of the nonprofit school food service as a collective unit (*e.g.,* in a school co-op or consortium), including activities relating to donated foods. Such activities must be conducted in accordance with a written agreement or contract between the parties. The school food authority collective unit is subject to the same requirements as a single school food authority in conducting such activities. For example, the school food authority collective unit may use a single inventory management system in its storage and control of purchased and donated foods.

§ 250.60 [Removed]

■ 11. Remove § 250.60.

§§ 250.61 and 250.62 [Redesignated as §§ 250.60 and 250.61]

■ 12. Redesignate §§ 250.61 and 250.62 as §§ 250.60 and 250.61, respectively.

■ 13. In newly redesignated § 250.60, revise paragraph (d) to read as follows:

§ 250.60 Child and Adult Care Food Program (CACFP).

* * * * *

(d) *Use of donated foods in a contract with a food service management company.* A child care or adult care institution may use donated foods in a contract with a food service management company to conduct its food service. The contract must meet the requirements in subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 226, 2 CFR part 200, subpart D and appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and USDA implementing regulations at 2 CFR parts 400 and 416, as applicable, with respect to the formation of such contracts.

* * * * *

■ 14. In newly redesignated § 250.61, revise paragraph (d) to read as follows:

§ 250.61 Summer Food Service Program (SFSP).

* * * * *

(d) *Use of donated foods in a contract with a food service management company.* A service institution may use donated foods in a contract with a food service management company to conduct the food service. The contract must meet the requirements in subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 225, 2 CFR part 200, subpart D and appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, and USDA implementing regulations at 2 CFR parts 400 and 416, as applicable, with respect to the formation of such contracts.

* * * * *

■ 15. Revise subpart F to read as follows:

Subpart F—Household Programs

Sec.

250.63 Commodity Supplemental Food Program (CSFP).
250.64 The Emergency Food Assistance Program (TEFAP).
250.65 Food Distribution Program on Indian Reservations (FDPIR).
250.66 [Reserved]

§ 250.63 Commodity Supplemental Food Program (CSFP).

(a) *Distribution of donated foods in CSFP.* The Department provides donated foods in CSFP to the distributing agency (*i.e.,* the State agency, in accordance with 7 CFR part 247) for further distribution in the State, in accordance with 7 CFR part 247. State agencies and recipient agencies (*i.e.,* local agencies in 7 CFR part 247) must comply with the requirements of this part in the distribution, control, and use of donated foods in CSFP, to the extent that such requirements are not inconsistent with the requirements in 7 CFR part 247.

(b) *Types of donated foods distributed.* Donated foods distributed in CSFP include Section 4(a) foods, and donated foods provided under Section 32, Section 416, or Section 709, as available.

§ 250.64 The Emergency Food Assistance Program (TEFAP).

(a) *Distribution of donated foods in TEFAP.* The Department provides donated foods in TEFAP to the distributing agency (*i.e.,* the State agency, in accordance with 7 CFR part 251) for further distribution in the State, in accordance with 7 CFR part 251. State agencies and recipient agencies must comply with the requirements of this part in the distribution, control, and use of donated foods, to the extent that such requirements are not inconsistent with the requirements in 7 CFR part 251.

(b) *Types of donated foods distributed.* Donated foods distributed in TEFAP include Section 27 foods, and donated foods provided under Section

32, Section 416, or Section 709, as available.

§ 250.65 Food Distribution Program on Indian Reservations (FDPIR).

(a) *Distribution of donated foods in FDPIR.* The Department provides donated foods in FDPIR to the distributing agency (*i.e.*, the State agency, in accordance with 7 CFR parts 253 and 254, which may be an Indian Tribal Organization) for further distribution, in accordance with 7 CFR parts 253 and 254. The State agency must comply with the requirements of this part in the distribution, control, and use of donated foods, to the extent that such requirements are not inconsistent with the requirements in 7 CFR parts 253 and 254.

(b) *Types of donated foods distributed.* Donated foods distributed in FDPIR include Section 4(a) foods, and donated foods provided under Section 32, Section 416, or Section 709, as available.

§ 250.66 [Reserved]

■ 16. Revise the heading of subpart G to read as follows:

Subpart G—Additional Provisions

■ 17. Revise §§ 250.68, 250.69, and 250.70 to read as follows:

§ 250.68 Nutrition Services Incentive Program (NSIP).

(a) *Distribution of donated foods in NSIP.* The Department provides donated foods in NSIP to State Units on Aging and their selected elderly nutrition projects for use in providing meals to elderly persons. NSIP is administered at the Federal level by DHHS' Administration for Community Living (ACL), which provides an NSIP grant each year to State Units on Aging. The State agencies may choose to receive all, or part, of the grant as donated foods, on behalf of its elderly nutrition projects. The Department is responsible for the purchase of the donated foods and their delivery to State Units on Aging. ACL is responsible for transferring funds to the Department for the cost of donated food purchases and for expenses related to such purchases.

(b) *Types and quantities of donated foods distributed.* Each State Unit on Aging, and its elderly nutrition projects, may receive any types of donated foods available in food distribution or child nutrition programs, to the extent that such foods may be distributed cost-effectively. Each State Unit on Aging may receive donated foods with a value equal to its NSIP grant. Each State Unit on Aging and elderly nutrition project may also receive donated foods under Section 32, Section 416, and Section 709, as available, and under Section 14 (42 U.S.C. 1762(a)).

(c) *Role of distributing agency.* The Department delivers NSIP donated foods to distributing agencies, which distribute them to elderly nutrition projects selected by each State Unit on Aging. The distributing agency may only distribute donated foods to elderly nutrition projects with which they have signed agreements. The agreements must contain provisions that describe the roles of each party in ensuring that the desired donated foods are ordered, stored, and distributed in an effective manner.

(d) *Donated food values used in crediting a State Unit on Aging's NSIP grant.* FNS uses the average price (cost per pound) for USDA purchases of a donated food made in a contract period in crediting a State Unit on Aging's NSIP grant.

(e) *Coordination between FNS and ACL.* FNS and ACL coordinate their respective roles in NSIP through the execution of annual agreements. The agreement ensures that ACL transfers funds to FNS sufficient to purchase the donated foods requested by State Units on Aging, and to meet expenses related to such purchases. The agreement also authorizes FNS to carry over any such funds that are not used in the current fiscal year to make purchases of donated foods for the appropriate State Units on Aging in the following fiscal year.

§ 250.69 Disasters.

(a) *Use of donated foods to provide congregate meals.* The distributing agency may provide donated foods from current inventories, either at the distributing or recipient agency level, to a disaster organization (as defined in § 250.2), for use in providing congregate meals to persons in need of food assistance as a result of a Presidentially declared disaster or emergency (hereinafter referred to collectively as a "disaster"). FNS approval is not required for such use. However, the distributing agency must notify FNS that such assistance is to be provided, and the period of time that it is expected to be needed. The distributing agency may extend such period of assistance as needs dictate, but must notify FNS of such extension.

(b) *Use of donated foods for distribution to households.* Subject to FNS approval, the distributing agency may provide donated foods from current inventories, either at the distributing or recipient agency level, to a disaster organization, for distribution to households in need of food assistance because of a disaster. Such distribution may continue for the period that FNS has determined to be necessary to meet the needs of such households. However, households receiving disaster SNAP (D-SNAP) benefits are not eligible to receive such donated food assistance.

(c) *Approval of disaster organization.* Before distribution of donated foods to a disaster organization, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance, which must be submitted to the distributing agency either electronically or in written form. The distributing agency must also submit such application to FNS for review and approval before permitting distribution of donated foods to households.

(1) The disaster organization's application must, to the extent possible, include the following information:

(i) A description of the disaster situation;

(ii) The number of people requiring assistance;

(iii) The period of time for which donated foods are requested;

(iv) The quantity and types of food needed; and

(v) The number and location of sites where donated foods are to be used, to the extent that such information is known.

(2) In addition to the information required in paragraph (c)(1) of this section, disaster organizations applying to distribute donated foods to households must include the following information in their application:

(i) An explanation as to why such distribution is needed;

(ii) The method(s) of distribution available; and

(iii) A statement assuring that D-SNAP benefits and donated food assistance will not be provided simultaneously to individual households, and a description of the system that will be implemented to prevent such dual participation.

(d) *Information from households.* If the issuance of D-SNAP benefits has been approved, the distributing agency must ensure that the disaster organization obtains the following information from households receiving donated foods, and reports such information to the distributing agency:

(1) The name and address of the household members applying for assistance;

(2) The number of household members; and

(3) A statement from the head of the household certifying that the household is in need of food assistance, is not receiving D-SNAP benefits, and

understands that the sale or exchange of donated foods is prohibited.

(e) *Eligibility of emergency relief workers for congregate meals.* The disaster organization may use donated foods to provide meals to any emergency relief workers at the congregate feeding site who are directly engaged in providing relief assistance.

(f) *Reporting and recordkeeping requirements.* The distributing agency must report to FNS the number and location of sites where donated foods are used in congregate meals or household distribution as these sites are established. The distributing agency must also report the types and amounts of donated foods from distributing or recipient agency storage facilities used in disaster assistance, utilizing form FNS–292A, *Report of Commodity Distribution for Disaster Relief,* which must be submitted electronically, within 45 days from the termination of disaster assistance. This form must also be used to request replacement of donated foods, in accordance with paragraph (g) of this section. The distributing agency must maintain records of reports and other information relating to disasters.

(g) *Replacement of donated foods.* In order to ensure replacement of donated foods used in disasters, the distributing agency must submit to FNS a request for such replacement, utilizing form FNS–292A, *Report of Commodity Distribution for Disaster Relief,* within 45 days following the termination of disaster assistance. The distributing agency may request replacement of foods used from inventories in which donated foods are commingled with other foods (*i.e.,* at storage facilities of recipient agencies utilizing single inventory management), if the recipient agency received donated foods of the same type as the foods used during the year preceding the onset of the disaster assistance. FNS will replace such foods in the amounts used, or in the amount of like donated foods received during the preceding year, whichever is less.

(h) *Reimbursement of transportation costs.* In order to receive reimbursement for any costs incurred in transporting donated foods within the State, or from one State to another, for use in disasters, the distributing agency must submit a public voucher to FNS with documentation of such costs. FNS will review the request and reimburse the distributing agency.

§ 250.70 Situations of distress.

(a) *Use of donated foods to provide congregate meals.* The distributing agency may provide donated foods from current inventories, either at the distributing or recipient agency level, to a disaster organization, for use in providing congregate meals to persons in need of food assistance because of a situation of distress, as this term is defined in § 250.2. If the situation of distress results from a natural event (*e.g.,* a hurricane, flood, or snowstorm), such donated food assistance may be provided for a period not to exceed 30 days, without the need for FNS approval. However, the distributing agency must notify FNS that such assistance is to be provided. FNS approval must be obtained to permit such donated food assistance for a period exceeding 30 days. If the situation of distress results from other than a natural event (*e.g.,* an explosion), FNS approval is required to permit donated food assistance for use in providing congregate meals for any period of time.

(b) *Use of donated foods for distribution to households.* The distributing agency must receive FNS approval to provide donated foods from current inventories, either at the distributing or recipient agency level, to a disaster organization for distribution to households in need of food assistance because of a situation of distress. Such distribution may continue for the period of time that FNS determines necessary to meet the needs of such households. However, households receiving D-SNAP benefits are not eligible to receive such donated food assistance.

(c) *Approval of disaster organizations.* Before distribution of donated foods to a disaster organization, the distributing agency must review and approve such organization's application in accordance with applicable FNS guidance, which must be submitted to the distributing agency either electronically or in written form. The distributing agency must also submit such application to FNS for review and approval before permitting distribution of donated foods in a situation of distress that is not the result of a natural event, or for any distribution of donated foods to households. The disaster organization's application must, to the extent possible, include the information required in § 250.69(c).

(d) *Information from households.* If the issuance of D-SNAP benefits has been approved, the distributing agency must ensure that the disaster organization obtains the information in § 250.69(d) from households receiving donated foods, and reports such information to the distributing agency.

(e) *Eligibility of emergency relief workers for congregate meals.* The disaster organization may use donated foods to provide meals to any emergency relief workers at the congregate feeding site that are directly engaged in providing relief assistance.

(f) *Reporting and recordkeeping requirements.* The distributing agency must report to FNS the number and location of sites where donated foods are used in congregate meals or household distribution as these sites are established. The distributing agency must also report the types and amounts of donated foods from distributing or recipient agency storage facilities used in the situation of distress, utilizing form FNS–292A, *Report of Commodity Distribution for Disaster Relief,* which must be submitted electronically, within 45 days from the termination of assistance. This form must also be used to request replacement of donated foods, in accordance with paragraph (g) of this section. The distributing agency must maintain records of reports and other information relating to situations of distress.

(g) *Replacement of donated foods.* FNS will replace donated foods used in a situation of distress only to the extent that funds to provide for such replacement are available. The distributing agency must submit to FNS a request for replacement of such foods, utilizing form FNS–292A, *Report of Commodity Distribution for Disaster Relief,* which must be submitted electronically, within 45 days from the termination of assistance. The distributing agency may request replacement of foods used from inventories in which donated foods are commingled with other foods (*i.e.,* at storage facilities of recipient agencies utilizing single inventory management), if the recipient agency received donated foods of the same type as the foods used during the year preceding the onset of the situation of distress. Subject to the availability of funds, FNS will replace such foods in the amounts used, or in the amount of like donated foods received during the preceding year, whichever is less.

(h) *Reimbursement of transportation costs.* In order to receive reimbursement for any costs incurred in transporting donated foods within the State, or from one State to another, for use in a situation of distress, the distributing agency must submit a public voucher to FNS with documentation of such costs. FNS will review the request and reimburse the distributing agency to the extent that funds are available.

■ 18. Add § 250.71 to read as follows:

§ 250.71 OMB control numbers.

Unless as otherwise specified in the table in this section, the information collection reporting and recordkeeping requirements in 7 CFR part 250 are accounted for in OMB control number 0584–0293.

CFR Cite	OMB Control No.
§ 250.4(a)	0584–0067
§ 250.19(a)	0584–0067, 0584–0293
§§ 250.69(f) and (g) and 250.70(f) and (g)	0584–0067, 0584–0293

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

■ 19. The authority citation for part 251 is revised to read as follows:

Authority: 7 U.S.C. 7501–7516; 7 U.S.C. 2011–2036

■ 20. In § 251.4:
■ a. Add paragraphs (c)(4) and (5).
■ b. Remove paragraph (f)(4) and redesignate paragraph (f)(5) as paragraph (f)(4).
■ c. Revise paragraph (g).
■ d. Remove paragraph (l).

The additions and revision read as follows:

§ 251.4 Availability of commodities.

* * * * *

(c) * * *

(4) FNS will make allocations of donated commodity or food funding available to State agencies for two fiscal years. States will be allowed to carry over unexpended balances of donated food funding from one fiscal year into the next fiscal year.

(5) A State's donated food funding allocation remaining at the end of the fiscal year after the fiscal year in which it was initially appropriated will expire and will be unavailable to the State.

* * * * *

(g) *Distribution and control of donated commodities.* The State agency must ensure that the distribution, control, and use of donated commodities are in accordance with the requirements in this part, and with the requirements in 7 CFR part 250, to the extent that requirements in 7 CFR part 250 are not inconsistent with the requirements in this part. Transfers of donated commodities must comply with requirements in §§ 250.12(e) and 250.14(d), as applicable. In accordance with § 250.16, the State agency must ensure that restitution is made for the loss of donated commodities, or for the loss or improper use of funds provided for, or obtained as an incidence of, the distribution of donated commodities. The State agency is also subject to claims for such losses for which it is responsible, or for its failure to initiate or pursue claims against other parties responsible for such losses.

* * * * *

■ 21. In § 251.8, revise paragraph (b) to read as follows:

§ 251.8 Payment of funds for administrative costs.

* * * * *

(b) *Uniform Federal Assistance regulations.* Funds provided under this section shall be subject to the regulations issued under 2 CFR part 200, and USDA implementing regulations at 2 CFR parts 400 and 416, as applicable.

* * * * *

■ 22. In § 251.9, revise paragraphs (c) introductory text and (c)(2)(i) to read as follows:

§ 251.9 Matching of funds.

* * * * *

(c) *Applicable contributions.* States shall meet the requirements of paragraph (a) of this section through cash or in-kind contributions from sources other than Federal funds which are prohibited by law from being used to meet a Federally mandated State matching requirement. Such contributions shall meet the requirements set forth in 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR part 400. In accordance with the aforementioned regulations, as applicable, the matching requirement shall not be met by contributions for costs supported by another Federal grant, except as provided by Federal statute. Allowable contributions are only those contributions for costs which would otherwise be allowable as State or local-level administrative costs.

* * * * *

(2) *In-kind.* (i) Allowable in-kind contributions are any contributions, which are non-cash outlays, of real property and non-expendable personal property and the value of goods and services specifically identifiable with allowable State administrative costs or, when contributed by the State agency to an eligible recipient agency, allowable local-level administrative costs. Examples of in-kind contributions include, but are not limited to, the donation of office supplies, storage space, vehicles to transport the commodities, loading facilities and equipment such as pallets and forklifts, and other non-cash goods or services specifically identifiable with allowable State-level administrative costs or, when contributed by the State agency to an eligible recipient agency, allowable local-level administrative costs. In-kind contributions shall be valued in accordance with 2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR part 400, as applicable.

* * * * *

§ 251.10 [Amended]

■ 23. In § 251.10, amend paragraph (a)(2) by removing the reference "7 CFR part 3016" and adding in its place "2 CFR part 200, subpart D, and USDA implementing regulations at 2 CFR part 400".

Dated: April 8, 2016.

Yvette S. Jackson,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2016–08639 Filed 4–18–16; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Southeast Pacific Ocean, 2016–2017; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE451

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Southeast Pacific Ocean, 2016–2017

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (Lamont-Doherty) in collaboration with the National Science Foundation (NSF), for an Incidental Harassment Authorization (Authorization) to take marine mammals, by harassment only, incidental to conducting three marine geophysical (seismic) surveys in the southeast Pacific Ocean, in the latter half of 2016 and/or the beginning half of 2017. The proposed dates are between June 2016 and June 2017, to account for logistical and scheduling needs of the applicant. Per the Marine Mammal Protection Act (MMPA), we are requesting comments on our proposal to issue an Authorization to Lamont-Doherty to incidentally take, by level B harassment, 44 species of marine mammal during the specified activity and to incidentally take, by Level A harassment, 26 species of marine mammals. Although considered unlikely, any Level A harassment potentially incurred would be expected to be in the form of some smaller degree of permanent hearing loss due in part to the required monitoring measures for detecting marine mammals and required mitigation measures for power downs or shut downs of the airgun array if any animal is likely to enter the Level A exclusion zone. NMFS does not expect any serious injury, mortality, or deafness to occur in marine mammals as a result of this proposed survey.

DATES: NMFS must receive comments and information on or before May 19, 2016.

ADDRESSES: Address comments on the application to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Carduner@noaa.gov.* Please include 0648–XE451 in the subject line. Comments sent via email, including all attachments, must not exceed a 25 megabyte file size. NMFS is not responsible for email comments sent to addresses other than the one provided here.

Instructions: All submitted comments are part of the public record, and NMFS will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm* without change. All Personal Identifying Information (for example: name, address, etc.) voluntarily submitted by the commenter may also be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of Lamont-Doherty's application, NSF's draft environmental analysis, NMFS' draft environmental assessment (EA), and a list of the references used in this document, write to the previously mentioned address, telephone the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visit the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

FOR FURTHER INFORMATION CONTACT: Jordan Carduner, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization shall be granted for the incidental taking of small numbers of marine mammals if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The Authorization must also set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat (*i.e.,* mitigation); and requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On January 19, 2016, NMFS received an application from Lamont-Doherty requesting that NMFS issue an Authorization for the take of marine mammals, incidental to Oregon State University (OSU) and University of Texas (UT) conducting seismic surveys in the southeast Pacific Ocean, in the latter half of 2016 and/or the first half of 2017. NMFS considered the application and supporting materials adequate and complete on March 21, 2016.

Lamont-Doherty proposes to conduct three two-dimensional (2–D) surveys on the R/V *Marcus G. Langseth* (*Langseth*), a vessel owned by NSF and operated on its behalf by Columbia University's Lamont-Doherty Earth Observatory primarily in international waters of the southeast Pacific Ocean, with a small portion of the surveys occurring within the territorial waters of Chile. All proposed surveys will be conducted within the exclusive economic zone (EEZ) of Chile.

Increased underwater sound generated during the operation of the seismic airgun array is the only aspect of the proposed activity that is likely to result in the take of marine mammals. We anticipate that take, by Level B harassment, of 44 species of marine mammals could result from the specified activity. Although unlikely, NMFS also anticipates that a small amount of take by Level A harassment of 26 species of marine mammals could occur during the proposed survey.

Description of the Specified Activity

Overview

Lamont-Doherty plans to use one source vessel, the *Langseth,* with an array of 36 airguns as the energy source with a total volume of approximately 6,600 cubic inches (in ^{3}). The receiving system would consist of 64 ocean bottom seismometers (OBSs) and a single hydrophone streamer between 8 and 15 kilometers (km) (4.9 and 9.3 miles [mi]) in length. In addition to the operations of the airgun array, a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) would also be operated continuously throughout the proposed surveys. A total of approximately 9,633 km (5,986 mi) of transect lines would be surveyed in the southeast Pacific Ocean.

The primary purpose of the northern survey is to image the structure of the upper and lower plates in the region that slipped during the 2014 Pisagua/Iquique earthquake sequence and immediately to the south, where an historic seismic gap remains unruptured in order to better understand how geologic structure controlled the initiation, propagation, and termination of this rupture sequence.

The primary purpose of the central survey is to examine the extent and location of seafloor displacement and related subsurface fault movement related to the recent slip that occurred during the September 16, 2015, Illapel earthquake. The scientists would compare the newly acquired data with previously collected data to determine where displacement occurred, how much occurred, and which sub-seafloor faults were most likely active during this event.

The primary goal of the southern survey is to image the deep plate boundary thrust fault that can produce some of the world's largest earthquakes and tsunamis. This survey will image the characteristics of the plate-boundary thrust, sediment subduction, and upper plate structure within the 2010 Maule rupture segment and the 1960 Valdivia rupture area.

Dates and Duration

The surveys off Chile are proposed for 2016/2017 and would take approximately 60 days with the potential for an additional increase in number of days by 25 percent as a contingency for equipment failures, resurveys, or other operational needs. The surveys may occur at any time during the proposed authorized period of June 2016 to June 2017. The proposed survey off northern Chile would consist of approximately 45 days of science operations that include approximately 28 days of seismic operations, approximately 13 days of ocean bottom seismometer (OBS) deployment/retrieval, and approximately four days of transit and towed equipment deployment/retrieval. The central proposed survey would involve approximately six days, including approximately five days of seismic operations and approximately one day of equipment deployment/retrieval time. The southern proposed survey would involve approximately 32 days of science operations including approximately 27 days of seismic operations, and approximately five days of transit and towed equipment deployment/retrieval. As described above, the proposed surveys may occur at any time during the proposed authorized period of June 2016 to June 2017; however the proposed southern survey would most likely not occur between February and April.

NMFS refers the reader to the Detailed Description of Activities section later in this notice for more information on the scope of the proposed activities.

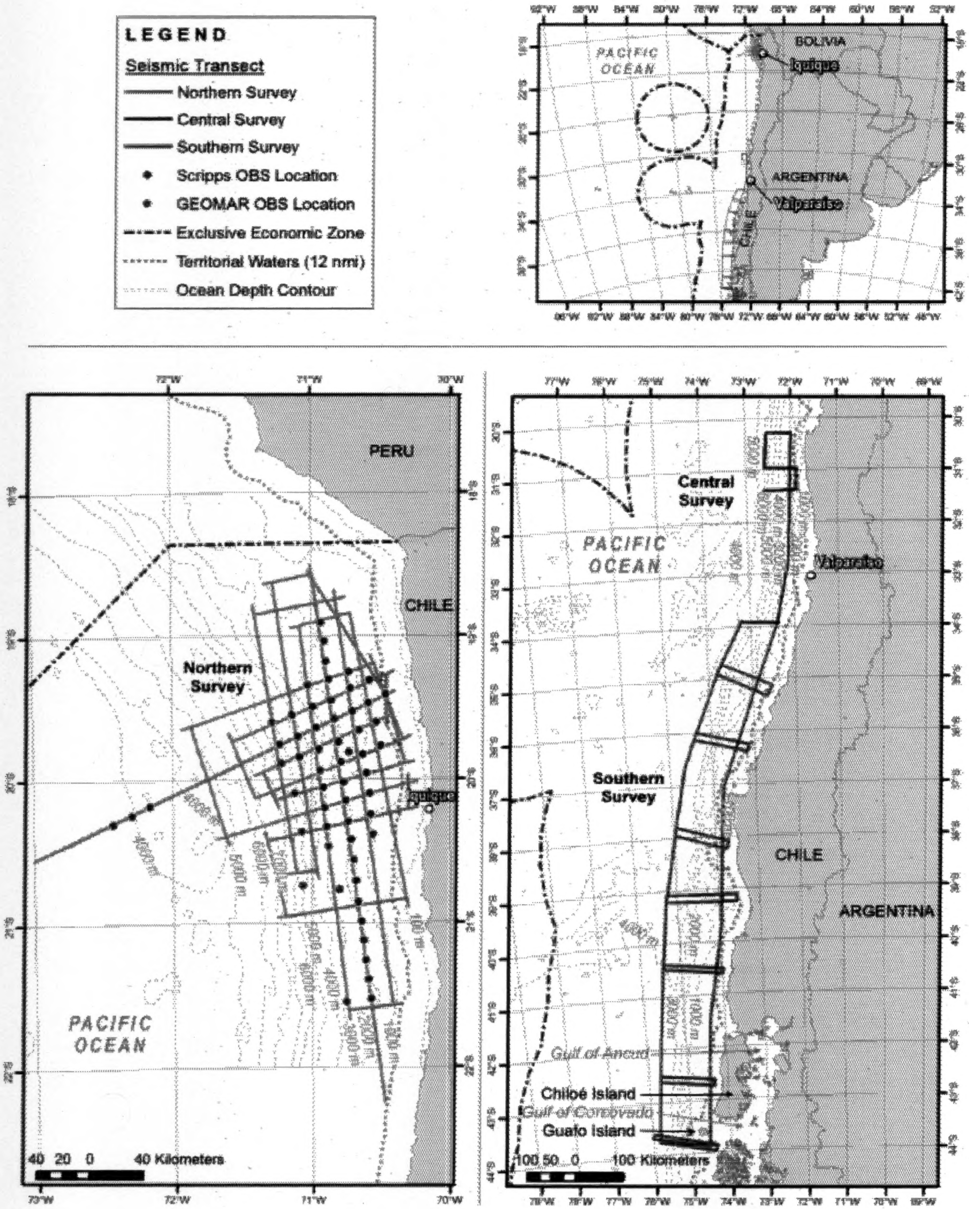
Specified Geographic Region

The proposed survey off northern Chile would occur within the area located at approximately 70.2–73.2° W., 18.3–22.4° S., the central proposed survey would occur within approximately 71.8–73.4° W., 30.1–33.9° S., and the southern proposed survey would occur within approximately 72.2–76.1° W., 33.9–44.1° S.

Representative survey tracklines are shown in Figure 1 in this notice and described further in Lamont-Doherty's application. Some deviation in actual track lines could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. Water depths in the proposed survey areas range from approximately 50 to 7,600 m (164 to 25,000 ft). The proposed seismic surveys would be conducted within the EEZ of Chile; only a small proportion of the surveys would take place in territorial waters (see Figure 1).

Figure 1—Survey Locations and Sample Tracklines

Figure 1 - Survey locations and sample tracklines


LEGEND
Seismic Transect
Northern Survey
Central Survey
Southern Survey
Scripps OBS Location
GEOMAR OBS Location
Exclusive Economic Zone
Territorial Waters (12 nmi)
Ocean Depth Contour
PACIFIC OCEAN
BOLIVIA
Iquique
ARGENTINA
Valparaiso
CHILE
PERU
Northern Survey
40 20 0 40 Kilometers
Central Survey
Southern Survey
Gulf of Ancud
Chiloé Island
Gulf of Corcovado
Guafo Island
100 50 0 100 Kilometers

Principal and Collaborating Investigators

The northern survey's Principal Investigator (PI) is Dr. A. Trehu (OSU) collaborating with Drs. E. Contreras-Reyes, E. Vera, and D. Comte (Universidad de Chile) and H. Kopp and D. Lange (Research Center for Marine Geosciences, GEOMAR, Helmholtz Centre for Ocean Research). The central and southern surveys PIs are Drs. N. Bangs (UT) and A. Trehu, participating with Drs. E. Contreras-Reyes and E. Vera.

Detailed Description of the Specified Activities

Transit Activities

The *Langseth* would transit to and from the survey locations from either a local port, or another research survey location in the region. The transit start and return points would be determined as the project schedule becomes finalized and may vary based on logistics, timing, or other factors.

Vessel Specifications

The survey would involve one source vessel, the R/V *Langseth*. The *Langseth*, owned by NSF and operated by Lamont-Doherty, is a seismic research vessel with a quiet propulsion system that avoids interference with the seismic signals emanating from the airgun array. The vessel is 71.5 m (235 ft) long; has a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834 pounds. It has two 3,550 horsepower (hp) Bergen BRG–6 diesel engines that drive two propellers. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800-hp bowthruster, which is off during seismic acquisition.

The *Langseth's* speed during seismic operations would be approximately 4.5 knots (kt) (8.3 km/hour [hr]; 5.1 miles per hour [mph]). The vessel's cruising speed outside of seismic operations is approximately 10 kt (18.5 km/hr; 11.5 mph). While the *Langseth* tows the airgun array, its turning rate is limited to five degrees per minute. Thus, the *Langseth's* maneuverability is limited during operations while it tows the streamer.

The vessel also has an observation tower from which protected species visual observers (observers) would watch for marine mammals before and during the proposed seismic acquisition operations. When stationed on the observation platform, the observer's eye level will be approximately 21.5 m (71 ft) above sea level providing the observer an unobstructed view around the entire vessel.

Data Acquisition Activities

A total of approximately 9,633 km (5,986 mi) of transect lines would be surveyed in the southeast Pacific Ocean: Approximately 4,543 km (2,823 mi) off northern Chile, approximately 791 km (491 mi) during the central survey, and approximately 4,299 km (2,671 mi) during the southern survey. There could be additional seismic operations associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard.

During the survey, the *Langseth* would deploy 36 airguns as an energy source with a total volume of 6,600 in^3. The receiving system would consist of up to 68 OBSs deployed for the northern survey site, and a single 8- to 15-km (5–8.3 mi) hydrophone streamer for all surveys. As the *Langseth* tows the airgun array along the survey lines, the OBSs and hydrophone streamer would receive the returning acoustic signals and transfer the data to the on-board processing system.

In addition to the operations of the airgun array, the ocean floor would be mapped with the Kongsberg EM 122 MBES and a Knudsen Chirp 3260 SBP. The proposed action will also include the use of an unmanned submersible vehicle for data collection. A Liquid Robotics SV2 Wave Glider could be used during the surveys for a period of several hours to collect data from seafloor sensors. An integrated acoustic transceiver communicates from the platform to a subsea-mounted acoustic data logger (ADL); the ADL then transfers data to a station on the platform, which transmits them to a control center via satellite. The SV2 Wave Glider platform is 2.1 m long and 60 cm wide (6.9 ft by 2ft).

Seismic Airguns

The *Langseth's* full array of airguns consists of four strings with 36 airguns (plus 4 spares), and a total volume of approximately 6,600 in^3. The airguns are a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 220 in^3, with a firing pressure of 1,950 pounds per square inch. The dominant frequency components range from zero to 188 Hertz (Hz). The airguns are fully detailed in § 2.2.3.1 of NSF's PEIS.

During the survey, Lamont-Doherty would plan to use the full array with most of the airguns in inactive mode. The 4-string array would be towed at a depth of 9 to 12 m (30 to 39 ft) during the northern proposed survey; the central and southern proposed surveys would use a tow depth of 9 m (30 ft). The shot intervals would range from 25 to 50 m (82 to 164 ft) for multi-channel seismic (MCS) acquisition, 100–150 m (328–492 ft) for simultaneous MCS and tomography acquisition, and 300 m (984 ft) for tomography acquisition. Airguns function by venting high-pressure air into the water, which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor, and there is also a reduction in the amount of sound transmitted in the near horizontal direction. The airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun subarrays on the *Langseth* range from 240 to 247 decibels (dB) re: 1 μPa$_{\text{(peak to peak)}}$. (We express sound pressure level as the ratio of a measured sound pressure and a reference pressure level. The commonly used unit for sound pressure is dB and the commonly used reference pressure level in underwater acoustics is 1 microPascal (μPa)). Briefly, the effective source levels for horizontal propagation are lower than source levels for downward propagation. We refer the reader to Lamont-Doherty's Authorization application and NSF's Environmental Analysis for additional information on downward and horizontal sound propagation related to the airgun's source levels.

Additional Acoustic Data Acquisition Systems

Multibeam Echosounder: The *Langseth* will operate a Kongsberg EM 122 multibeam echosounder concurrently during airgun operations to map characteristics of the ocean floor. However, as stated earlier, Lamont-Doherty will not operate the multibeam echosounder during transits to and from the survey areas (*i.e.*, when the airguns are not operating).

The hull-mounted echosounder emits brief pulses of sound (also called a ping) (10.5 to 13.0 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1 or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

Each ping consists of eight (in water greater than 1,000 m; 3,280 ft) or four (in water less than 1,000 m; 3,280 ft) successive, fan-shaped transmissions, from two to 15 milliseconds (ms) in duration and each ensonifying a sector that extends 1° fore-aft. Continuous wave pulses increase from 2 to 15 ms long in water depths up to 2,600 m (8,530 ft). The echosounder uses frequency-modulated chirp pulses up to 100-ms long in water greater than 2,600 m (8,530 ft). The successive transmissions span an overall cross-track angular extent of about 150°, with 2-ms gaps between the pulses for successive sectors.

Sub-bottom Profiler: The *Langseth* will also operate a Knudsen Chirp 3260 sub-bottom profiler concurrently during airgun and echosounder operations to provide information about the sedimentary features and bottom topography. As with the case of the echosounder, Lamont-Doherty will not operate the sub-bottom profiler during transits to and from the survey areas (*i.e.*, when the airguns are not operating).

The profiler is capable of reaching depths of 10,000 m (6.2 mi). The dominant frequency component is 3.5

kHz and a hull-mounted transducer on the vessel directs the beam downward in a 27° cone. The power output is 10 kilowatts (kW), but the actual maximum radiated power is three kilowatts or 222 dB re: 1 µPa. The ping duration is up to 64 ms with a pulse interval of one second, but a common mode of operation is to broadcast five pulses at 1-s intervals followed by a 5-s pause.

Ocean Bottom Seismometers: The *Langseth* would deploy a total of 50–54 OBS during the northern survey at a nominal 15-km (9.3 mi) spacing interval. Lamont-Doherty proposes to use one of two types of OBSs: The Woods Hole Oceanographic Institute (WHOI) or the Scripps Institution of Oceanography (SIO) OBS. The WHOI D2 OBS is approximately 0.9 m (2.9 ft) high with a maximum diameter of 50 centimeters (cm) (20 inches [in]). An anchor, made of a rolled steel bar grate that measures approximately 2.5 by 30.5 by 38.1 cm (1 by 12 by 15 in) and weighs 23 kilograms (kg) (51 pounds [lbs]) would anchor the seismometer to the seafloor. The SIO L-Cheapo OBS is approximately 0.9 m (2.9 ft) high with a maximum diameter of 97 centimeters (cm) (3.1 ft). The SIO anchors consist of 36-kg (79-lb) iron gates and measure approximately 7 by 91 by 91.5 cm (3 by 36 by 36 in).

After the *Langseth* completes the proposed seismic survey, an acoustic signal would trigger the release of each seismometer from the ocean floor. The *Langseth's* acoustic release transponder, located on the vessel, communicates with the seismometer at a frequency of 9 to13 kilohertz (kHz). The maximum source level of the release signal is 242 dB re: 1 µPa with an 8-millisecond pulse length. The received signal activates the seismometer's double burn-wire release assembly which then releases the seismometer from the anchor. The seismometer then floats to the ocean surface for retrieval by the *Langseth*. The steel grate anchors from each of the seismometers would remain on the seafloor.

The *Langseth* crew would deploy the seismometers one-by-one from the stern of the vessel while onboard protected species observers will alert them to the presence of marine mammals and recommend ceasing deploying or recovering the seismometers to avoid potential entanglement with marine mammal.

Hydrophone Streamer: Lamont-Doherty would deploy the single hydrophone streamer for multichannel operations after concluding the OBS operations. As the *Langseth* tows the airgun array along the survey lines, the streamer transfers the data to the on-board processing system.

Description of Marine Mammals in the Area of the Specified Activity

Table 1 in this notice provides the following: All marine mammal species with possible or confirmed occurrence in the proposed activity area; information on those species' regulatory status under the MMPA and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); abundance; local occurrence and range; and seasonality in the proposed activity area. Based on the best available information, NMFS expects that there may be a potential for certain cetacean and pinniped species to occur within the survey area (*i.e.*, potentially be taken) and have included additional information for these species in Table 1 of this notice. NMFS will carry forward analyses on the species listed in Table 1 later in this document.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE THREE PROPOSED SURVEY AREAS WITHIN THE SOUTHEAST PACIFIC OCEAN

Species	Regulatory status[1] [2]	Species abundance[3]	Local occurrence	Habitat
Antarctic minke whale (*Balaenoptera bonaerensis*).	MMPA—NC, ESA—NL	515,000	North—Rare, Central/South—Uncommon.	Coastal, pelagic.
Blue whale (*B. musculus*)	MMPA—D, ESA—EN	10,000[4]	North—Common, Central/South—Common.	Coastal, shelf, pelagic.
Bryde's whale (*Balaenoptera edeni*)	MMPA—NC, ESA—NL	43,633[5]	North—Common, Central/South—Common.	Coastal, pelagic.
Common minke whale (*B. acutorostrata*).	MMPA—NC, ESA—NL	515,000	North—Rare, Central/South—Uncommon.	Coastal, pelagic.
Fin whale (*B. physalus*)	MMPA—D, ESA—EN	22,000	North—Rare, Central/South—Common.	Shelf, slope, pelagic.
Humpback whale (*Megaptera novaengliae*).	MMPA—D, ESA—EN	42,000	North—Common, Central/South—Common.	Coastal, shelf, pelagic.
Pygmy right whale (*Caperea marginata*).	MMPA—NC, ESA—NL	Unknown	North—Unknown, Central/South—Rare.	Coastal, oceanic.
Sei whale (*B. borealis*)	MMPA—D, ESA—EN	10,000	North—Uncommon, Central/South—Uncommon.	Pelagic.
Southern right whale (*Eubalaena australis*).	MMPA—D, ESA—EN	12,000	North—Rare, Central/South—Rare.	Coastal, oceanic.
Sperm whale (*Physeter macrocephalus*).	MMPA—D, ESA—EN	355,000[6]	North—Common, Central/South—Common.	Pelagic, deep seas.
Dwarf sperm whale (*Kogia sima*)	MMPA—NC, ESA—NL	170,309[7]	North—Rare, Central/South—Rare.	Shelf, pelagic.
Pygmy sperm whale (*K. breviceps*)	MMPA—NC, ESA—NL	170,309[7]	North—Rare, Central/South—Rare.	Shelf, pelagic.
Andrew's beaked whale (*Mesoplodon bowdoini*).	MMPA—NC, ESA—NL	25,300[8]	North—Unknown, Central/South—Rare.	Pelagic.
Blainville's beaked whale (*M. densirostris*).	MMPA—NC, ESA—NL	25,300[8]	North—Uncommon, Central/South—Uncommon.	Pelagic.
Cuvier's beaked whale (*Ziphius cavirostris*).	MMPA—NC, ESA—NL	20,000[8]	North—Uncommon, Central/South—Uncommon.	Slope, pelagic.
Gray's beaked whale (*M. grayi*)	MMPA—NC, ESA—NL	25,300[8]	North—Rare, Central/South—Rare.	Pelagic.
Hector's beaked whale (*M. hectori*)	MMPA—NC, ESA—NL	25,300[8]	North—Unknown, Central/South—Rare.	Pelagic.

TABLE 1—GENERAL INFORMATION ON MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE THREE PROPOSED SURVEY AREAS WITHIN THE SOUTHEAST PACIFIC OCEAN—Continued

Species	Regulatory status[1][2]	Species abundance[3]	Local occurrence	Habitat
Pygmy beaked whale (*Mesoplodon peruvianus*).	MMPA—NC, ESA—NL	25,300[8]	North—Rare, Central/South—Rare.	Pelagic.
Shepherd's beaked whale (*Tasmacetus shepherdi*).	MMPA—NC, ESA—NL	25,300[8]	North—Unknown, Central/South—Rare.	Pelagic.
Spade-toothed whale (*Mesoplodon traversii*).	MMPA—NC, ESA—NL	25,300[8]	North—Unknown, Central/South—Rare.	Pelagic.
Strap-toothed beaked whale (*M. layardii*).	MMPA—NC, ESA—NL	25,300[8]	North—Unknown, Central/South—Rare.	Pelagic.
Southern bottlenose whale (*Hyperoodon planifrons*).	MMPA—NC, ESA—NL	72,000[9]	North—Unknown, Central/South—Uncommon.	Pelagic.
Chilean dolphin (*Cephalorhynchus eutropia*).	MMPA—NC, ESA—NL	10,000	North—Unknown, Central/South—Uncommon.	Coastal.
Rough-toothed dolphin (*Steno bredanensis*).	MMPA—NC, ESA—NL	107,633[10]	North—Rare, Central/South—Unknown.	Oceanic.
Common bottlenose dolphin (*Tursiops truncatus*).	MMPA—NC, ESA—NL	335,834[10]	North—Abundant, Central/South—Common.	Coastal, pelagic, shelf.
Striped dolphin (*S. coeruleoalba*)	MMPA—NC, ESA—NL	964,362[10]	North—Abundant, Central/South—Common.	Shelf edge, pelagic.
Short-beaked common dolphin (*Delphinus delphis*).	MMPA—NC, ESA—NL	1,766,551[11]	North—Abundant, Central/South—Abundant.	Coastal, shelf.
Long-beaked common dolphin (*Delphinus capensis*).	MMPA—NC, ESA—NL	144,000[12]	North—Uncommon, Central/South—Unknown.	Coastal, shelf.
Dusky dolphin (*Lagenorhynchus obscurus*).	MMPA—NC, ESA—NL	25,880[13]	North—Abundant, Central/South—Abundant.	Shelf, slope.
Peale's dolphin (*Lagenorhynchus australis*).	MMPA—NC, ESA—NL	Unknown	North—Unknown, Central/South—Uncommon.	Coastal.
Hourglass dolphin (*Lagenorhynchus cruciger*).	MMPA—NC, ESA—NL	144,300[14]	North—Unknown, Central/South—Rare.	Pelagic.
Southern right whale dolphin (*Lissodelphis peronii*).	MMPA—NC, ESA—NL	Unknown	North—Uncommon, Central/South—Common.	Pelagic.
Risso's dolphin (*Grampus griseus*)	MMPA—NC, ESA—NL	110,457[10]	North—Common, Central/South—Uncommon.	Shelf, slope.
Pygmy killer whale (*Feresa attenuate*).	MMPA—NC, ESA—NL	38,900[8]	North—Rare, Central/South—Uncommon.	Oceanic, pantropical.
False killer whale (*Pseudorca crassidens*).	MMPA—NC, ESA—NL	39,800[8]	North—Uncommon, Central/South—Rare.	Pelagic.
Killer whale (*Orcinus orca*)	MMPA—NC, ESA—NL	50,000	North—Rare, Central/South—Rare.	Coastal, shelf, pelagic.
Long-finned pilot whale (*Globicephala melas*).	MMPA—NC, ESA—NL	200,000[15]	North—Rare, Central/South—Rare.	Coastal, pelagic.
Short-finned pilot whale (*Globicephala macrorhynchus*).	MMPA—NC, ESA—NL	589,315[16]	North—Rare, Central/South—Rare.	Coastal, pelagic.
Burmeister's porpoise (*Phocoena spinipinnis*).	MMPA—NC, ESA—NL	Unknown	North—Coastal, Central/South—Coastal.	Coastal.
Juan Fernandez fur seal (*Arctocephalus philippii*).	MMPA—NC, ESA—NL	32,278[17]	North—Rare, Central/South—Rare.	Coastal, pelagic.
South American fur seal (*Arctocephalus australis*).	MMPA—NC, ESA—NL	250,000	North—Rare, Central/South—Rare.	Coastal, shelf, slope.
South American sea lion (*Otaria byronia*).	MMPA—NC, ESA—NL	397,771[18]	North—Abundant, Central/South—Abundant.	Coastal, shelf.
Southern elephant seal (*Mirounga leonina*).	MMPA—NC, ESA—NL	640,000[19]	North—Abundant, Central/South—Abundant.	Coastal, pelagic.

[1] MMPA: NC = Not classified; D = Depleted.

[2] ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.

[3] Except where noted best estimate abundance information obtained from the International Whaling Commission's whale population estimates (IWC, 2016) or from the International Union for Conservation of Nature and Natural Resources Red List of Threatened Species Web site (IUCN, 2016). Unknown = Abundance information does not exist for this species.

[4] IUCN's best estimate of the global population is 10,000 to 25,000.

[5] Estimate from IUCN's Web page for Bryde's whales. Southern Hemisphere: Southern Indian Ocean (13,854); western South Pacific (16,585); and eastern South Pacific (13,194) (IWC, 1981).

[6] Whitehead (2002).

[7] Estimate from IUCN's Web page for *Kogia* spp. Eastern Tropical Pacific (ETP) (150,000); Hawaii (19,172); Gulf of Mexico (742); and western Atlantic (395).

[8] Wade and Gerrodette (1993).

[9] South of 60° S. from the 1885/1986–1990/1991 IWC/IDCR and SOWER surveys (Branch and Butterworth, 2001).

[10] ETP, line-transect survey, August–December 2006 (Gerrodette *et al.*, 2008).

[11] ETP, southern stock, 2000 survey (Gerrodette and Forcada 2002).

[12] Gerrodette and Palacios (1996) estimated 55,000 within Pacific coast waters of Mexico, 69,000 in the Gulf of California, and 20,000 off South Africa. IUCN, 2016.

[13] IUCN, 2016 and Markowitz, 2004.

[14] Kasamatsu and Joyce, 1995.

[15] Abundance estimates for beaked, southern bottlenose, and pilot whales south of the Antarctic Convergence in January (Kasamatsu and Joyce, 1995).
[16] Gerrodette and Forcada (2002).
[17] 2005/2006 minimum population estimate (Osman, 2008).
[18] Crespo *et al.* (2012). Current status of the South American sea lion along the distribution range.
[19] Hindell and Perrin (2009).

NMFS refers the public to Lamont-Doherty's application, NSF's draft environmental analysis (see **ADDRESSES**), available online at: *http://www.nmfs.noaa.gov/pr/sars/species.htm* for further information on the biology and local distribution of these species.

Potential Effects of the Specified Activities on Marine Mammals

This section includes a summary and discussion of the ways that components (*e.g.*, seismic airgun operations, vessel movement) of the specified activity may impact marine mammals. The "Estimated Take by Incidental Harassment" section later in this document will include a quantitative analysis of the number of individuals that NMFS expects to be taken by this activity. The "Negligible Impact Analysis" section will include the analysis of how this specific proposed activity would impact marine mammals and will consider the content of this section, the "Estimated Take by Incidental Harassment" section, the "Proposed Mitigation" section, and the "Anticipated Effects on Marine Mammal Habitat" section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

NMFS intends to provide a background of potential effects of Lamont-Doherty's activities in this section. This section does not consider the specific manner in which Lamont-Doherty would carry out the proposed activity, what mitigation measures Lamont-Doherty would implement, and how either of those would shape the anticipated impacts from this specific activity. Operating active acoustic sources, such as airgun arrays, has the potential for adverse effects on marine mammals. The majority of anticipated impacts would be from the use of the airgun array.

Acoustic Impacts

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.*, 1995; Southall *et al.*, 1997; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Southall *et al.* (2007) designated "functional hearing groups" for marine mammals based on available behavioral data; audiograms derived from auditory evoked potentials; anatomical modeling; and other data. Southall *et al.* (2007) also estimated the lower and upper frequencies of functional hearing for each group. However, animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range.

The functional groups applicable to this proposed survey and the associated frequencies are:

- Low frequency cetaceans (13 species of mysticetes): Functional hearing estimates occur between approximately 7 Hertz (Hz) and 25 kHz (extended from 22 kHz based on data indicating that some mysticetes can hear above 22 kHz; Au *et al.*, 2006; Lucifredi and Stein, 2007; Ketten and Mountain, 2009; Tubelli *et al.*, 2012);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing estimates occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia*, the franciscana, and four species of *cephalorhynchids*): Functional hearing estimates occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in water: phocid (true seals) functional hearing estimates occur between approximately 75 Hz and 100 kHz (Hemila *et al.*, 2006; Mulsow *et al.*, 2011; Reichmuth *et al.*, 2013) and otariid (seals and sea lions) functional hearing estimates occur between approximately 100 Hz to 40 kHz.

Approximately 44 marine mammals (9 Mysticetes, 31 odontocetes, and 4 pinnipeds) would likely occur in the proposed action area. Table 2 presents the classification of these species into their respected functional hearing group. NMFS considers a species' functional hearing group when analyzing the effects of exposure to sound on marine mammals.

TABLE 2—CLASSIFICATION OF MARINE MAMMALS THAT COULD POTENTIALLY OCCUR IN THE PROPOSED SURVEY AREAS WITHIN THE SOUTHEAST PACIFIC OCEAN, 2016/2017, BY FUNCTIONAL HEARING GROUP

[Southall *et al.*, 2007]

Low Frequency Hearing Range	Antarctic minke, blue, Bryde's, common (dwarf) minke, fin, humpback, Sei, pygmy right, and Southern right whale.
Mid-Frequency Hearing Range	Sperm whale; Cuvier's; Andrew's; Blainville's, Gray's; Hector's; pygmy; and Shepherd's beaked whale; strap toothed; spade toothed; Southern bottlenose whale; bottlenose; hourglass; dusky; Peale's; rough-toothed; striped; Chilean; Risso's; long-beaked common; short-beaked common; and Southern right whale dolphin; pygmy killer whale; false killer whale; killer whale, long-finned pilot whale; and short-finned pilot whale.
High Frequency Hearing Range	Dwarf sperm whale and pygmy sperm whale.
Pinnipeds in Water Hearing Range	Southern elephant seal; Southern American sea lion; Subantarctic fur seal; and Juan Fernandez fur seal.

1. Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun operations might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent impairment, or non-auditory physical or physiological effects (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Nowacek *et al.*, 2007; Southall *et al.*, 2007). The effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.*, 1995).

Tolerance

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defined tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or manmade noise. In many cases, tolerance develops by the animal habituating to the stimulus (*i.e.*, the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.*, 1995), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.*, 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Several studies have also shown that marine mammals at distances of more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of the marine mammal group. Although various baleen whales and toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times marine mammals of all three types have shown no overt reactions (Stone, 2003; Stone and Tasker, 2006; Moulton *et al.*,2005, 2006) and (MacLean and Koski, 2005; Bain and Williams, 2006).

Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. Weir (2008) recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings per hour) for humpback and sperm whales according to the airgun array's operational status (*i.e.*, active versus silent).

Bain and Williams (2006) examined the effects of a large airgun array (maximum total discharge volume of 1,100 in^3) on six species in shallow waters off British Columbia and Washington: Harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), gray whale (*Eschrichtius robustus*), Dall's porpoise (*Phocoenoides dalli*), and harbor porpoise (*Phocoena phocoena*). Harbor porpoises showed reactions at received levels less than 155 dB re: 1 µPa at a distance of greater than 70 km (43 mi) from the seismic source (Bain and Williams, 2006). However, the tendency for greater responsiveness by harbor porpoise is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson, *et al.*, 1995; Southall, *et al.*, 2007). In contrast, the authors reported that gray whales seemed to tolerate exposures to sound up to approximately 170 dB re: 1 µPa (Bain and Williams, 2006) and Dall's porpoises occupied and tolerated areas receiving exposures of 170–180 dB re: 1 µPa (Bain and Williams, 2006; Parsons, *et al.*, 2009). The authors observed several gray whales that moved away from the airguns toward deeper water where sound levels were higher due to propagation effects resulting in higher noise exposures (Bain and Williams, 2006). However, it is unclear whether their movements reflected a response to the sounds (Bain and Williams, 2006). Thus, the authors surmised that the lack of gray whale responses to higher received sound levels were ambiguous at best because one expects the species to be the most sensitive to the low-frequency sound emanating from the airguns (Bain and Williams, 2006).

Pirotta *et al.* (2014) observed short-term responses of harbor porpoises to a 2–D seismic survey in an enclosed bay in northeast Scotland which did not result in broad-scale displacement. The harbor porpoises that remained in the enclosed bay area reduced their buzzing activity by 15 percent during the seismic survey (Pirotta *et al.*, 2014). Thus, the authors suggest that animals exposed to anthropogenic disturbance may make trade-offs between perceived risks and the cost of leaving disturbed areas (Pirotta *et al.*, 2014).

Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000).

The term masking refers to the inability of an animal to recognize the occurrence of an acoustic stimulus because of interference of another acoustic stimulus (Clark *et al.*, 2009). Thus, masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. It is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations. Introduced underwater sound may, through masking, more specifically reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.*, 1995).

Evidence suggests that some marine mammals may be able to compensate for communication masking by adjusting their acoustic behavior through shifting call frequencies, increasing call volume, and increasing vocalization rates. For example, blue whales were shown to increase call rates when exposed to noise from seismic surveys in the St. Lawrence Estuary (Di Iorio and Clark, 2010). Other studies reported that some North Atlantic right whales exposed to high shipping noise increased call frequency (Parks *et al.*, 2007) and some humpback whales responded to low-frequency active sonar playbacks by increasing song length (Miller *et al.*, 2000). Additionally, beluga whales change their vocalizations in the presence of high background noise possibly to avoid masking calls (Au *et al.*, 1985; Lesage *et al.*, 1999; Scheifele *et al.*, 2005).

Studies have shown that some baleen and toothed whales continue calling in the presence of seismic pulses, and some researchers have heard these calls between the seismic pulses (*e.g.*, Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999; Nieukirk *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, 2005b, 2006; and Dunn and Hernandez, 2009).

In contrast, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, NMFS is aware of one report that observed sperm whales ceasing calls when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994). However, more recent studies have found that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002; Tyack *et al.*, 2003; Smultea *et al.*, 2004; Holst *et al.*, 2006; and Jochens *et al.*, 2008).

Risch *et al.* (2012) documented reductions in humpback whale vocalizations in the Stellwagen Bank National Marine Sanctuary concurrent with transmissions of the Ocean Acoustic Waveguide Remote Sensing (OAWRS) low-frequency fish sensor system at distances of 200 km (124 mi) from the source. The recorded OAWRS produced series of frequency modulated pulses and the signal received levels ranged from 88 to 110 dB re: 1 μPa (Risch, *et al.*, 2012). The authors hypothesized that individuals did not leave the area but instead ceased singing and noted that the duration and frequency range of the OAWRS signals (a novel sound to the whales) were similar to those of natural humpback whale song components used during mating (Risch *et al.*, 2012). Thus, the novelty of the sound to humpback whales in the study area provided a compelling contextual probability for the observed effects (Risch *et al.*, 2012). However, the authors did not state or imply that these changes had long-term effects on individual animals or populations (Risch *et al.*, 2012).

Several studies have also reported hearing dolphins and porpoises calling while airguns were operating (*e.g.*, Gordon *et al.*, 2004; Smultea *et al.*, 2004; Holst *et al.*, 2005a, b; and Potter *et al.*, 2007). The sounds important to small odontocete communication are predominantly at much higher frequencies than the dominant components of airgun sounds, thus limiting the potential for masking in those species.

Although some degree of masking is inevitable when high levels of manmade broadband sounds are present in the sea, marine mammals have evolved systems and behavior that function to reduce the impacts of masking. Odontocete conspecifics may readily detect structured signals, such as the echolocation click sequences of small toothed whales even in the presence of strong background noise because their frequency content and temporal features usually differ strongly from those of the background noise (Au and Moore, 1988, 1990). The components of background noise that are similar in frequency to the sound signal in question primarily determine the degree of masking of that signal.

Redundancy and context can also facilitate detection of weak signals. These phenomena may help marine mammals detect weak sounds in the presence of natural or manmade noise. Most masking studies in marine mammals present the test signal and the masking noise from the same direction. The sound localization abilities of marine mammals suggest that, if signal and noise come from different directions, masking would not be as severe as the usual types of masking studies might suggest (Richardson *et al.*, 1995). The dominant background noise may be highly directional if it comes from a particular anthropogenic source such as a ship or industrial site. Directional hearing may significantly reduce the masking effects of these sounds by improving the effective signal-to-noise ratio. In the cases of higher frequency hearing by the bottlenose dolphin, beluga whale, and killer whale, empirical evidence confirms that masking depends strongly on the relative directions of arrival of sound signals and the masking noise (Penner *et al.*, 1986; Dubrovskiy, 1990; Bain *et al.*, 1993; Bain and Dahlheim, 1994).

Toothed whales and probably other marine mammals as well, have additional capabilities besides directional hearing that can facilitate detection of sounds in the presence of background noise. There is evidence that some toothed whales can shift the dominant frequencies of their echolocation signals from a frequency range with a lot of ambient noise toward frequencies with less noise (Au *et al.*, 1974, 1985; Moore and Pawloski, 1990; Thomas and Turl, 1990; Romanenko and Kitain, 1992; Lesage *et al.*, 1999). A few marine mammal species increase the source levels or alter the frequency of their calls in the presence of elevated sound levels (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1993, 1999; Terhune, 1999; Foote *et al.*, 2004; Parks *et al.*, 2007, 2009; Di Iorio and Clark, 2010; Holt *et al.*, 2009).

These data demonstrating adaptations for reduced masking pertain mainly to the very high frequency echolocation signals of toothed whales. There is less information about the existence of corresponding mechanisms at moderate or low frequencies or in other types of marine mammals. For example, Zaitseva *et al.* (1980) found that, for the bottlenose dolphin, the angular separation between a sound source and a masking noise source had little effect on the degree of masking when the sound frequency was 18 kHz, in contrast to the pronounced effect at higher frequencies. Studies have noted directional hearing at frequencies as low as 0.5–2 kHz in several marine mammals, including killer whales (Richardson *et al.*, 1995a). This ability may be useful in reducing masking at these frequencies. In summary, high levels of sound generated by anthropogenic activities may act to mask the detection of weaker biologically important sounds by some marine mammals. This masking may be more prominent for lower frequencies. For higher frequencies, such as that used in echolocation by toothed whales, several mechanisms are available that may allow them to reduce the effects of such masking.

Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007).

Types of behavioral reactions can include the following: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.*, pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, one could expect the consequences of behavioral modification to be biologically significant if the change affects growth, survival, and/or reproduction (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007). Examples of behavioral modifications that could impact growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those associated with beaked whale stranding related to exposure to military mid-frequency tactical sonar);
- Permanent habitat abandonment due to loss of desirable acoustic environment; and

- Disruption of feeding or social interaction resulting in significant energetic costs, inhibited breeding, or cow-calf separation.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Richardson *et al.*, 1995; Southall *et al.*, 2007).

Baleen Whales

Studies have shown that underwater sounds from seismic activities are often readily detectable by baleen whales in the water at distances of many kilometers (Castellote *et al.*, 2012 for fin whales). Many studies have also shown that marine mammals at distances more than a few kilometers away often show no apparent response when exposed to seismic activities (*e.g.*, Madsen & Mohl, 2000 for sperm whales; Malme *et al.*, 1983, 1984 for gray whales; and Richardson *et al.*, 1986 for bowhead whales). Other studies have shown that marine mammals continue important behaviors in the presence of seismic pulses (*e.g.*, Dunn & Hernandez, 2009 for blue whales; Greene Jr. *et al.*, 1999 for bowhead whales; Holst and Beland, 2010; Holst and Smultea, 2008; Holst *et al.*, 2005; Nieukirk *et al.*, 2004; Richardson, *et al.*, 1986; Smultea *et al.*, 2004).

Observers have seen various species of *Balaenoptera* (blue, sei, fin, and minke whales) in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and have localized calls from blue and fin whales in areas with airgun operations (*e.g.*, McDonald *et al.*, 1995; Dunn and Hernandez, 2009; Castellote *et al.*, 2010). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good visibility, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting versus silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006).

Ship-based monitoring studies of baleen whales (including blue, fin, sei, minke, and whales) in the northwest Atlantic found that overall, this group had lower sighting rates during seismic versus non-seismic periods (Moulton and Holst, 2010). The authors observed that baleen whales as a group were significantly farther from the vessel during seismic compared with non-seismic periods. Moreover, the authors observed that the whales swam away more often from the operating seismic vessel (Moulton and Holst, 2010). Initial sightings of blue and minke whales were significantly farther from the vessel during seismic operations compared to non-seismic periods and the authors observed the same trend for fin whales (Moulton and Holst, 2010). Also, the authors observed that minke whales most often swam away from the vessel when seismic operations were underway (Moulton and Holst, 2010).

Blue Whales

McDonald *et al.* (1995) tracked blue whales relative to a seismic survey with a 1,600 in^3 airgun array. One whale started its call sequence within 15 km (9.3 mi) from the source, then followed a pursuit track that decreased its distance to the vessel where it stopped calling at a range of 10 km (6.2 mi) (estimated received level at 143 dB re: 1 μPa (peak-to-peak)). After that point, the ship increased its distance from the whale which continued a new call sequence after approximately one hour and 10 km (6.2 mi) from the ship. The authors reported that the whale had taken a track paralleling the ship during the cessation phase but observed the whale moving diagonally away from the ship after approximately 30 minutes continuing to vocalize. Because the whale may have approached the ship intentionally or perhaps was unaffected by the airguns, the authors concluded that there was insufficient data to infer conclusions from their study related to blue whale responses (McDonald, *et al.*, 1995).

Dunn and Hernandez (2009) tracked blue whales in the eastern tropical Pacific Ocean near the northern East Pacific Rise using 25 ocean-bottom-mounted hydrophones and ocean bottom seismometers during the conduct of an academic seismic survey by the R/V *Maurice Ewing* in 1997. During the airgun operations, the authors recorded the airgun pulses across the entire seismic array which they determined were detectable by eight whales that had entered into the area during a period of airgun activity (Dunn and Hernandez, 2009). The authors were able to track each whale call-by-call using the B components of the calls and examine the whales' locations and call characteristics with respect to the periods of airgun activity. The authors tracked the blue whales from 28 to 100 km (17 to 62 mi) away from active air-gun operations, but did not observe changes in call rates and found no evidence of anomalous behavior that they could directly ascribed to the use of the airguns (Dunn and Hernandez, 2009; Wilcock *et al.*, 2014). Further, the authors state that while the data do not permit a thorough investigation of behavioral responses, they observed no correlation in vocalization or movement with the concurrent airgun activity and estimated that the sound levels produced by the *Ewing's* airguns were approximately less than 145 dB re: 1 μPa (Dunn and Hernandez, 2009).

Fin Whales

Castellote *et al.* (2010) observed localized avoidance by fin whales during seismic airgun events in the western Mediterranean Sea and adjacent Atlantic waters from 2006–2009 and reported that singing fin whales moved away from an operating airgun array for a time period that extended beyond the duration of the airgun activity.

Gray Whales

A few studies have documented reactions of migrating and feeding (but not wintering) gray whales (*Eschrichtius robustus*) to seismic surveys. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100-in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re: 1 μPa on an (approximate) root mean square basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re: 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.*, 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.*, 1999; Gailey *et al.*, 2007; Johnson *et al.*, 2007; Yazvenko *et al.*, 2007a, 2007b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in

Malme *et al.*, 1984; Richardson *et al.*, 1995; Allen and Angliss, 2014). The western Pacific gray whale population did not appear affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.*, 2007). Similarly, bowhead whales (*Balaena mysticetus*) have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.*, 1987; Allen and Angliss, 2014). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects.

Humpback Whales

McCauley *et al.* (1998, 2000) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16-airgun array (2,678-in^3) and to a single, 20-in^3 airgun with source level of 227 dB re: 1 μPa (peak-to-peak). In the 1998 study, the researchers documented that avoidance reactions began at five to eight km (3.1 to 4.9 mi) from the array, and that those reactions kept most pods approximately three to four km (1.9 to 2.5 mi) from the operating seismic boat. In the 2000 study, McCauley *et al.* (1998, 2000) noted localized displacement during migration of four to five km (2.5 to 3.1 mi) by traveling pods and seven to 12 km (4.3 to 7.5 mi) by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re: 1 μPa for humpback pods containing females, and at the mean closest point of approach distance, the received level was 143 dB re: 1 μPa. The initial avoidance response generally occurred at distances of five to eight km (3.1 to 4.9 mi) from the airgun array and 2 km (1.2 mi) from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re: 1 μPa.

Data collected by observers during several of Lamont-Doherty's seismic surveys in the northwest Atlantic Ocean showed that sighting rates of humpback whales were significantly greater during non-seismic periods compared with periods when a full array was operating (Moulton and Holst, 2010). In addition, humpback whales were more likely to swim away and less likely to swim towards a vessel during seismic versus non-seismic periods (Moulton and Holst, 2010).

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64-L (100-in^3) airgun (Malme *et al.*, 1985). Some humpbacks seemed "startled" at received levels of 150 to 169 dB re: 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 re: 1 μPa. However, Moulton and Holst (2010) reported that humpback whales monitored during seismic surveys in the northwest Atlantic had lower sighting rates and were most often seen swimming away from the vessel during seismic periods compared with periods when airguns were silent.

Other studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.*, 2004). However, the evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.*, 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was "no observable direct correlation" between strandings and seismic surveys (IWC, 2007: 236).

Toothed Whales

Few systematic data are available describing reactions of toothed whales to noise pulses. However, systematic work on sperm whales is underway (*e.g.*, Gordon *et al.*, 2006; Madsen *et al.*, 2006; Winsor and Mate, 2006; Jochens *et al.*, 2008; Miller *et al.*, 2009) and there is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.*, Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.*, 2006; Stone and Tasker, 2006; Potter *et al.*, 2007; Hauser *et al.*, 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.*, 2009; Richardson *et al.*, 2009; Moulton and Holst, 2010). Reactions of toothed whales to large arrays of airguns are variable and, at least for delphinids, seem to be confined to a smaller radius than has been observed for mysticetes.

Delphinids

Seismic operators and protected species observers (observers) on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (*e.g.*, Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.*, 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.*, 2009; Barkaszi *et al.*, 2009; Moulton and Holst, 2010). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (*e.g.*, Moulton and Miller, 2005). Nonetheless, there have been indications that small toothed whales sometimes move away or maintain a somewhat greater distance from the vessel when a large array of airguns is operating than when it is silent (*e.g.*, Goold, 1996a,b,c; Stone and Tasker, 2006; Weir, 2008, Barry *et al.*, 2010; Moulton and Holst, 2010). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km or less, and some individuals show no apparent avoidance.

Captive bottlenose dolphins exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002, 2005). However, the animals tolerated high received levels of sound (pk–pk level > 200 dB re 1 μPa) before exhibiting aversive behaviors.

Killer Whales

Observers stationed on seismic vessels operating off the United Kingdom from 1997–2000 have provided data on the occurrence and behavior of various toothed whales exposed to seismic pulses (Stone, 2003; Gordon *et al.*, 2004). The studies note that killer whales were significantly farther from large airgun arrays during periods of active airgun operations compared with periods of silence. The displacement of the median distance from the array was approximately 0.5 km (0.3 mi) or more. Killer whales also appear to be more tolerant of seismic shooting in deeper water (Stone, 2003; Gordon *et al.*, 2004).

Sperm Whales

Most studies of sperm whales exposed to airgun sounds indicate that the whale shows considerable tolerance of airgun pulses (*e.g.*, Stone, 2003; Moulton *et al.*, 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call. However, controlled exposure experiments in the Gulf of Mexico indicate alteration of foraging behavior upon exposure to airgun sounds (Jochens *et al.*, 2008; Miller *et al.*, 2009; Tyack, 2009).

Beaked Whales

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. Most beaked whales tend to avoid approaching vessels of other types (*e.g.*, Wursig *et al.*, 1998). They may also dive for an extended period when approached by a vessel (*e.g.*, Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.*, 2006; Tyack *et al.*, 2006).

Based on a single observation, Aguilar-Soto *et al.* (2006) suggested a reduction in foraging efficiency of Cuvier's beaked whales during a close approach by a vessel. In contrast, Moulton and Holst (2010) reported 15 sightings of beaked whales during seismic studies in the northwest Atlantic and the authors observed seven of those sightings during times when at least one airgun was operating. Because sighting rates and distances were similar during seismic and non-seismic periods, the authors could not correlate changes to beaked whale behavior to the effects of airgun operations (Moulton and Holst, 2010).

Similarly, other studies have observed northern bottlenose whales remain in the general area of active seismic operations while continuing to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.*, 2005).

Pinnipeds

Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources proposed for use. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior. Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of Arctic ice seals exposed to seismic pulses (Harris *et al.*, 2001; Moulton and Lawson, 2002). These seismic projects usually involved arrays of 6 to 16 airguns with total volumes of 560 to 1,500 in.[3] The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal (*Phoca hispida*) sightings tended to be farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). However, these avoidance movements were relatively small, on the order of 100 m (328 ft) to a few hundred meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by the animals. Seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. Similarly, seals are often very tolerant of pulsed sounds from seal-scaring devices (Mate and Harvey, 1987; Jefferson and Curry, 1994; Richardson *et al.*, 1995). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinniped reactions to airguns (Thompson *et al.*, 1998).

Hearing Impairment

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran *et al.*, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.*, the threshold returns to the pre-exposure value), it is a temporary threshold shift (Southall *et al.*, 2007).

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (*i.e.*, sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.*, there is complete recovery), can occur in specific frequency ranges (*i.e.*, an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.*, 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985).

PTS is considered an auditory injury (Southall *et al.*, 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.*, 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in non-human animals.

Recent studies by Kujawa and Liberman (2009) and Lin *et al.* (2011) found that despite completely reversible threshold shifts that leave cochlear sensory cells intact, large threshold shifts could cause synaptic level changes and delayed cochlear nerve degeneration in mice and guinea pigs, respectively. NMFS notes that the high level of TTS that led to the synaptic changes shown in these studies is in the range of the high degree of TTS that Southall *et al.* (2007) used to calculate PTS levels. It is unknown whether smaller levels of TTS would lead to similar changes. NMFS, however, acknowledges the complexity of noise exposure on the nervous system, and will re-examine this issue as more data become available.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.*, 2000, 2002b, 2003, 2005a, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.*, 2009; Mooney *et al.*, 2009a, 2009b; Popov *et al.*, 2011a, 2011b; Kastelein *et al.*, 2012a; Schlundt *et al.*, 2000; Nachtigall *et al.*, 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.*, 1999, 2005; Kastelein *et al.*, 2012b).

Lucke *et al.* (2009) found a threshold shift (TS) of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re: 1 μPa, which corresponds to a sound exposure level of 164.5 dB re: 1 μPa2 s after integrating exposure. NMFS currently uses the root-mean-square (rms) of received SPL at 180 dB and 190 dB re: 1 μPa as the threshold above which permanent threshold shift (PTS) could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of rms SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.*, 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. This is still above NMFS' current 180 dB rms re: 1 μPa threshold for injury. However, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.*, 2002; Kastelein and Jennings, 2012).

A recent study on bottlenose dolphins (Schlundt, *et al.*, 2013) measured hearing thresholds at multiple frequencies to determine the amount of TTS induced before and after exposure to a sequence of impulses produced by a seismic airgun. The airgun volume and operating pressure varied from 40–150 in^3 and 1000–2000 psi, respectively. After three years and 180 sessions, the authors observed no significant TTS at any test frequency, for any combinations of airgun volume, pressure, or proximity to the dolphin during behavioral tests (Schlundt, *et al.*, 2013). Schlundt *et al.* (2013) suggest that the potential for airguns to cause hearing loss in dolphins is lower than previously predicted, perhaps as a result of the low-frequency content of airgun impulses compared to the high-frequency hearing ability of dolphins.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur during the proposed seismic survey. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns, but their avoidance reactions are generally not as strong or consistent compared to cetacean reactions.

Non-Auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (*i.e.*, beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its wellbeing. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.*, 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses; autonomic nervous system responses; neuroendocrine responses; or immune responses.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classic "fight or flight" response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with stress. These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, the pituitary hormones regulate virtually all neuroendocrine functions affected by stress—including immune competence, reproduction, metabolism, and behavior. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995), altered metabolism (Elasser *et al.*, 2000), reduced immune competence (Blecha, 2000), and behavioral disturbance.

Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.*, 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that the body quickly replenishes after alleviation of the stressor. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, it diverts energy resources from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state called "distress" (*sensu* Seyle, 1950) or "allostatic loading" (*sensu* McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiment; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Reneerkens *et al.*, 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to anthropogenic sound exposure, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as "distress" upon exposure to anthropogenic sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (*e.g.*, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.*, goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, we assume that reducing a marine mammal's ability to gather information about its environment and communicate with other members of its species would induce stress, based on data that terrestrial animals exhibit those responses under similar conditions (NRC, 2003) and because marine mammals use hearing as their primary sensory mechanism. Therefore, NMFS assumes that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses. More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), NMFS also assumes that stress responses could persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.*, 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, there are few data about the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.*, 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns. In addition, marine mammals that show behavioral avoidance of seismic vessels, including some pinnipeds, are unlikely to incur non-auditory impairment or other physical effects.

Stranding and Mortality

When a living or dead marine mammal swims or floats onto shore and becomes "beached" or incapable of returning to sea, the event is a "stranding" (Geraci *et al.*, 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). The legal definition for a stranding under the MMPA is that "(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance."

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most strandings are unknown (Geraci *et al.*, 1976; Eaton, 1979; Odell *et al.*, 1980; Best, 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos, 2000; Creel, 2005; DeVries *et al.*, 2003; Fair and Becker, 2000; Foley *et al.*, 2001; Moberg, 2000; Relyea, 2005a; 2005b, Romero, 2004; Sih *et al.*, 2004). There is no direct evidence of marine mammal stranding being caused by seismic surveys. We have considered the potential for the proposed seismic surveys to result in marine mammal stranding and have concluded that, based on the best available information, stranding is not expected to occur.

2. Potential Effects of the Multibeam Echosounder

Lamont-Doherty would operate the Kongsberg EM 122 multibeam echosounder from the source vessel during the planned survey. Sounds from the multibeam echosounder are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this echosounder is at frequencies near 12 kHz, and the maximum source level is 242 dB re: 1 μPa. The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m/3280 ft deep) or four (less than 1,000 m/3280 ft deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the vessel (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2- to 15-ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an echosounder emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause temporary threshold shift.

NMFS has considered the potential for behavioral responses such as stranding and indirect injury or mortality from Lamont-Doherty's use of the multibeam echosounder. In 2013, an International Scientific Review Panel (ISRP) investigated a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system (Southall *et al.*, 2013) associated with the use of a high-frequency mapping system. The report indicated that the use of a 12-kHz multibeam echosounder was the most plausible and likely initial behavioral trigger of the mass stranding event. This was the first time that a relatively high-frequency mapping sonar system had been associated with a stranding event. However, the report also notes that there were several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales within the Loza Lagoon system (*e.g.*, the survey vessel transiting in a north-south direction on the shelf break parallel to the shore may have trapped the animals between the sound source and the shore driving them towards the Loza Lagoon). They concluded that for odontocete cetaceans that hear well in the 10–50 kHz range, where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts (Southall, *et al.*, 2013). However, the risk may be very low given the extensive use of these systems worldwide on a daily basis and the lack of direct evidence of such responses previously reported (Southall, *et al.*, 2013).

Navy sonars linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the echosounder. The area of possible influence of the echosounder is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During Lamont-Doherty's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by the animal. The following section outlines possible effects of an echosounder on marine mammals.

Masking

Marine mammal communications would not be masked appreciably by the echosounder's signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the echosounder's signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses

Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and strandings by beaked whales. During exposure to a 21 to 25 kHz "whale-finding" sonar with a source level of 215 dB re: 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (656 ft)(Frankel, 2005). When a 38-kHz echosounder and a 150-kHz acoustic Doppler current profiler were transmitting during studies in the eastern tropical Pacific Ocean, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1-s tonal signals at frequencies similar to those emitted by Lamont-Doherty's echosounder and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an echosounder.

Hearing Impairment and Other Physical Effects

Given recent stranding events associated with the operation of mid-frequency tactical sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see earlier discussion). However, the echosounder proposed for use by the *Langseth* is quite different from sonar used for naval operations. The echosounder's pulse duration is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the echosounder's beam for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the echosounder relative to that from naval sonar.

3. Potential Effects of the Sub-Bottom Profiler

Lamont-Doherty would also operate a sub-bottom profiler from the source vessel during the proposed survey. The profiler's sounds are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the profiler is at 3.5 kHz, and the beam is directed downward. The sub-bottom profiler on the *Langseth* has a maximum source level of 222 dB re: 1 μPa. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for a profiler more powerful than that on the *Langseth*. If the animal was in the area, it would have to pass the transducer at close range and be subjected to sound levels that could cause temporary threshold shift.

Masking

Marine mammal communications would not be masked appreciably by the profiler's signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the profiler's signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses

Responses to the profiler are likely to be similar to the other pulsed sources discussed earlier if received at the same levels. However, the pulsed signals from the profiler are considerably weaker than those from the echosounder.

Hearing Impairment and Other Physical Effects

It is unlikely that the profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The profiler operates simultaneously with other higher-power acoustic sources. Many marine mammals would move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the profiler.

4. Potential Effects of Vessel Movement and Collisions

Vessel movement in the vicinity of marine mammals has the potential to result in either a behavioral response or a direct physical interaction. We discuss both scenarios here.

Behavioral Responses to Vessel Movement

There are limited data concerning marine mammal behavioral responses to vessel traffic and vessel noise, and a lack of consensus among scientists with respect to what these responses mean or whether they result in short-term or long-term adverse effects. In those cases where there is a busy shipping lane or where there is a large amount of vessel traffic, marine mammals may experience acoustic masking (Hildebrand, 2005) if they are present in the area (*e.g.,* killer whales in Puget Sound; Foote *et al.,* 2004; Holt *et al.,* 2008). In cases where vessels actively approach marine mammals (*e.g.,* whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.,* 2002; Constantine *et al.,* 2003), reduced blow interval (Ritcher *et al.,* 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.,* 2003; 2004). A detailed review of marine mammal reactions to ships and boats is available in Richardson *et al.* (1995). For each of the marine mammal taxonomy groups, Richardson *et al.* (1995) provides the following assessment regarding reactions to vessel traffic:

Toothed whales: In summary, toothed whales sometimes show no avoidance reaction to vessels, or even approach them. However, avoidance can occur, especially in response to vessels of types used to chase or hunt the animals. This may cause temporary displacement, but we know of no clear evidence that toothed whales have abandoned significant parts of their range because of vessel traffic.

Baleen whales: When baleen whales receive low-level sounds from distant or stationary vessels, the sounds often seem to be ignored. Some whales approach the sources of these sounds. When vessels approach whales slowly and non-aggressively, whales often exhibit slow and inconspicuous avoidance maneuvers. In response to strong or rapidly changing vessel noise, baleen whales often interrupt their normal behavior and swim rapidly away. Avoidance is especially strong when a boat heads directly toward the whale.

Behavioral responses to stimuli are complex and influenced to varying degrees by a number of factors, such as species, behavioral contexts, geographical regions, source characteristics (moving or stationary, speed, direction, etc.), prior experience of the animal, and physical status of the animal. For example, studies have shown that beluga whales' reactions varied when exposed to vessel noise and traffic. In some cases, naive beluga whales exhibited rapid swimming from ice-breaking vessels up to 80 km (49.7 mi) away, and showed changes in surfacing, breathing, diving, and group composition in the Canadian high Arctic where vessel traffic is rare (Finley *et al.,* 1990). In other cases, beluga whales were more tolerant of vessels, but responded differentially to certain vessels and operating characteristics by reducing their calling rates (especially older animals) in the St. Lawrence River where vessel traffic is common (Blane and Jaakson, 1994). In Bristol Bay, Alaska, beluga whales continued to feed when surrounded by fishing vessels and resisted dispersal even when purposefully harassed (Fish and Vania, 1971).

In reviewing more than 25 years of whale observation data, Watkins (1986) concluded that whale reactions to vessel traffic were "modified by their previous experience and current activity: Habituation often occurred rapidly, attention to other stimuli or preoccupation with other activities sometimes overcame their interest or wariness of stimuli." Watkins noticed that over the years of exposure to ships in the Cape Cod area, minke whales changed from frequent positive interest (*e.g.,* approaching vessels) to generally uninterested reactions; fin whales changed from mostly negative (*e.g.,* avoidance) to uninterested reactions; right whales apparently continued the same variety of responses (negative, uninterested, and positive responses) with little change; and humpbacks dramatically changed from mixed responses that were often negative to reactions that were often strongly positive. Watkins (1986) summarized that "whales near shore, even in regions with low vessel traffic, generally have become less wary of boats and their noises, and they have appeared to be less easily disturbed than previously. In particular locations with intense shipping and repeated approaches by boats (such as the whale-watching areas of Stellwagen Bank), more and more whales had positive reactions to familiar vessels, and they also occasionally approached other boats and yachts in the same ways." Based on the best available information, we do not believe vessel traffic associated with the proposed activities will result in the take of marine mammals; therefore vessel traffic is not discussed further in this document.

Vessel Strike

Ship strikes of cetaceans can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Vanderlaan and Taggart, 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.*, the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.*, 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.*, bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC, 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus, 2001; Laist *et al.*, 2001; Jensen and Silber, 2003; Vanderlaan and Taggart, 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kts). During seismic operations the *Langseth* will travel at approximately 4.5 kts (5.1 mph); the vessel's cruising speed outside of seismic operations is approximately 10 kts (11.5 mph). Based on the best available information, we do not believe marine mammals will be struck by vessels as a result of the proposed activities; therefore vessel strike is not discussed further in this document.

Entanglement

Entanglement can occur if wildlife becomes immobilized in survey lines, cables, nets, or other equipment that is moving through the water column. The proposed seismic survey would require towing approximately 8.0 km (4.9 mi) of equipment and cables. This size of the array generally carries a relatively low risk of entanglement for marine mammals. Wildlife, especially slow moving animals, such as large whales, have a low probability of entanglement due to the low amount of slack in the lines, the slow speed of the survey vessel, and onboard monitoring. Pinnipeds and odontocetes are even less likely to be entangled than large whales due to their size, speed and agility. Lamont-Doherty has no recorded cases of entanglement of marine mammals during their conduct of over 12 years of seismic surveys (NSF, 2015). Based on the best available information, we do not believe entanglement of marine mammals will occur as a result of the proposed activities; therefore entanglement is not discussed further in this document.

Anticipated Effects on Marine Mammal Habitat

The primary potential impacts to marine mammal habitat and other marine species are associated with elevated sound levels produced by airguns. This section describes the potential impacts to marine mammal habitat from the specified activity.

Anticipated Effects on Fish as Prey Species

NMFS considered the effects of the survey on marine mammal prey (*i.e.*, fish and invertebrates), as a component of marine mammal habitat in the following subsections. There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (*e.g.*, startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (*i.e.*, mortality).

The available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population. There have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects: The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question. For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (*e.g.*, predator avoidance, prey capture, orientation and navigation, reproduction, *etc.*) are adversely affected.

There are few data about the mechanisms and characteristics of damage impacting fish by exposure to seismic survey sounds. Peer-reviewed scientific literature has presented few data on this subject. NMFS is aware of only two papers with proper experimental methods, controls, and careful pathological investigation that implicate sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated temporary threshold shift in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only temporary threshold shift (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than what would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns (less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)) likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m [29.5 ft] in the former case and less than 2 m [6.5 ft] in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (*i.e.*, the cutoff frequency) at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.*, 1987; La Bella *et al.*, 1996; Santulli *et al.*, 1999; McCauley *et al.*, 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.*, 2003; Popper *et al.*, 2005; Boeger *et al.*, 2006).

The National Park Service conducted an experiment of the effects of a single 700 in^3 airgun in Lake Meade, Nevada (USGS, 1999) to understand the effects of a marine reflection survey of the Lake Meade fault system (Paulson *et al.*, 1993, in USGS, 1999). The researchers suspended the airgun 3.5 m (11.5 ft) above a school of threadfin shad in Lake Meade and fired three successive times at a 30 s interval. Neither surface inspection nor diver observations of the water column and bottom found any dead fish.

For a proposed seismic survey in Southern California, USGS (1999) conducted a review of the literature on the effects of airguns on fish and fisheries. They reported a 1991 study of the Bay Area Fault system from the continental shelf to the Sacramento River, using a 10 airgun (5,828 in^3) array. Brezzina and Associates, hired by USGS to monitor the effects of the surveys, concluded that airgun operations were not responsible for the death of any of the fish carcasses observed, and the airgun profiling did not appear to alter the feeding behavior of sea lions, seals, or pelicans observed feeding during the seismic surveys.

Some studies have reported that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.*, 1996; Dalen *et al.*, 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a worst-case scenario, mathematical model to investigate the effects of seismic energy on fish eggs and larvae. The authors concluded that mortality rates caused by exposure to seismic surveys were low, as compared to natural mortality rates, and suggested that the impact of seismic surveying on recruitment to a fish stock was not significant.

Physiological Effects: Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.*, 1994; Santulli *et al.*, 1999; McCauley *et al.*, 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (*e.g.*, Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Santulli *et al.*, 1999; Wardle *et al.*, 2001; Hassel *et al.*, 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

The former Minerals Management Service (MMS, 2005) assessed the effects of a proposed seismic survey in Cook Inlet, Alaska. The seismic survey proposed using three vessels, each towing two, four-airgun arrays ranging from 1,500 to 2,500 in^3. The Minerals Management Service noted that the impact to fish populations in the survey area and adjacent waters would likely be very low and temporary and also concluded that seismic surveys may displace the pelagic fishes from the area temporarily when airguns are in use. However, fishes displaced and avoiding the airgun noise are likely to backfill the survey area in minutes to hours after cessation of seismic testing. Fishes not dispersing from the airgun noise (*e.g.*, demersal species) may startle and move short distances to avoid airgun emissions.

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions (Lokkeborg *et al.*, 2012; Fewtrell and McCauley, 2012). NMFS would expect prey species to return to their pre-exposure behavior once seismic firing ceased (Lokkeborg *et al.*, 2012; Fewtrell and McCauley, 2012).

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.*, 2001). The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale.

Moriyasu *et al.* (2004) and Payne *et al.* (2008) provide literature reviews of the effects of seismic and other underwater sound on invertebrates. The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is in Appendix E of NSF's 2011 Programmatic Environmental Impact Statement (NSF/USGS, 2011).

Pathological Effects: In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.*, 1994; Christian *et al.*, 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.*, 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.*, 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.*, 2004), but the article provides little evidence to support this claim.

Tenera Environmental (2011) reported that Norris and Mohl (1983, summarized in Mariyasu *et al.*, 2004) observed lethal effects in squid (*Loligo vulgaris*) at levels of 246 to 252 dB after 3 to 11 minutes. Another laboratory study observed abnormalities in larval scallops after exposure to low frequency noise in tanks (de Soto *et al.*, 2013).

Andre *et al.* (2011) exposed four cephalopod species (*Loligo vulgaris, Sepia officinalis, Octopus vulgaris,* and *Ilex coindetii*) to two hours of continuous sound from 50 to 400 Hz at 157 +/− 5 dB re: 1 μPa. They reported lesions to the sensory hair cells of the statocysts of the exposed animals that increased in severity with time, suggesting that cephalopods are particularly sensitive to low-frequency sound. The received sound pressure level was 157 ± 5 dB re: 1 μPa, with peak levels at 175 dB re: 1 μPa. As in the McCauley *et al.* (2003) paper on sensory hair cell damage in pink snapper as a result of exposure to seismic sound, the cephalopods were subjected to higher sound levels than they would be under natural conditions, and they were unable to swim away from the sound source.

Physiological Effects: Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing reproductive success. Studies have noted primary and secondary stress responses (*i.e.*, changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans occurring several days or months after exposure to seismic survey sounds (Payne *et al.*, 2007). The authors noted that crustaceans exhibited no behavioral impacts (Christian *et al.*, 2003, 2004; DFO, 2004). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects: There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (*e.g.*, squid in McCauley *et al.*, 2000). In other cases, the authors observed no behavioral impacts (*e.g.*, crustaceans in Christian *et al.*, 2003, 2004; DFO, 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.*, 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

In examining impacts to fish and invertebrates as prey species for marine mammals, we expect fish to exhibit a range of behaviors including no reaction or habituation (Peña *et al.*, 2013) to startle responses and/or avoidance (Fewtrell and McCauley, 2012). We expect that the seismic survey would have no more than a temporary and minimal adverse effect on any fish or invertebrate species. Although there is a potential for injury to fish or marine life in close proximity to the vessel, we expect that the impacts of the seismic survey on fish and other marine life specifically related to acoustic activities would be temporary in nature, negligible, and would not result in substantial impact to these species or to their role in the ecosystem. Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an Incidental Harassment Authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Lamont-Doherty has reviewed the following source documents and has incorporated a suite of proposed mitigation measures into their project description:

(1) Protocols used during previous Lamont-Doherty and NSF-funded

seismic research cruises as approved by us and detailed in the NSF's 2011 PEIS and 2016 draft environmental analysis;

(2) Previous incidental harassment authorizations applications and authorizations that NMFS has approved and authorized; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, Lamont-Doherty, and/or its designees have proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;
(2) Proposed exclusion zones;
(3) Power down procedures;
(4) Shutdown procedures;
(5) Ramp-up procedures; and
(6) Speed and course alterations.

NMFS reviewed Lamont-Doherty's proposed mitigation measures and has proposed an additional measure to effect the least practicable adverse impact on marine mammals. They are:

(1) Expanded power down procedures for concentrations of six or more whales that do not appear to be traveling (*e.g.*, feeding, socializing, etc.).

Vessel-Based Visual Mitigation Monitoring

Lamont-Doherty would position observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. Observers would also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shutdown (*i.e.*, greater than approximately eight minutes for this proposed cruise). When feasible, the observers would conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on the observations, the *Langseth* would power down or shutdown the airguns when marine mammals are observed within or about to enter a designated exclusion zone for cetaceans or pinnipeds.

During seismic operations, at least four protected species observers would be aboard the *Langseth*. Lamont-Doherty would appoint the observers with NMFS' concurrence, and they would conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two observers would be on duty from the observation tower to monitor marine mammals near the seismic vessel. Using two observers would increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two observers on effort, but at least one observer would be on watch during bathroom breaks and mealtimes. Observers would be on duty in shifts of no longer than four hours in duration.

Two observers on the *Langseth* would also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third observer would monitor the passive acoustic monitoring equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two observers (visual) on duty from the observation tower, and an observer (acoustic) on the passive acoustic monitoring system. Before the start of the seismic survey, Lamont-Doherty would instruct the vessel's crew to assist in detecting marine mammals and implementing mitigation requirements.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level would be approximately 21.5 m (70.5 ft) above sea level, and the observer would have a good view around the entire vessel. During daytime, the observers would scan the area around the vessel systematically with reticle binoculars (*e.g.*, 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices would be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) would be available to assist with distance estimation. They are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. The user measures distances to animals with the reticles in the binoculars.

Lamont-Doherty would immediately power down or shutdown the airguns when observers see marine mammals within or about to enter the designated exclusion zone. The observer(s) would continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations would not resume until the observer has confirmed that the animal has left the zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

Proposed Mitigation Exclusion Zones

Lamont-Doherty would use safety radii to designate exclusion zones and to estimate take for marine mammals. Table 3 shows the distances at which one would expect to receive sound levels (160-, 180-, and 190-dB,) from the airgun array and a single airgun. If the protected species visual observer detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew would immediately power down the airgun array, or perform a shutdown if necessary (see Shut-down Procedures).

TABLE 3—PREDICTED DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 re: 1 μPa COULD BE RECEIVED DURING THE PROPOSED SURVEY AREAS WITHIN THE SOUTHEAST PACIFIC OCEAN

Source and volume (in^3)	Tow depth (m)	Water depth (m)	Predicted RMS distances[1] (m)		
			190 dB	180 dB	160 dB
Single Bolt airgun (40 in^3)	9 or 12	<100	[2] 100	[2] 100	1,041
		100 to 1,000	100	100	647
		>1,000	100	100	431
36-Airgun Array (6,600 in^3)	9	<100	591	2,060	22,580
		100 to 1,000	429	1,391	8,670
		>1,000	286	927	5,780

TABLE 3—PREDICTED DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160 re: 1 μPa COULD BE RECEIVED DURING THE PROPOSED SURVEY AREAS WITHIN THE SOUTHEAST PACIFIC OCEAN—Continued

Source and volume (in³)	Tow depth (m)	Water depth (m)	Predicted RMS distances [1] (m)		
			190 dB	180 dB	160 dB
36-Airgun Array (6,600 in³)	12	<100	710	2,480	27,130
		100 to 1,000	522	1,674	10,362
		>1,000	348	1,116	6,908

[1] Predicted distances based on information presented in Lamont-Doherty's application.

[2] NMFS required Lamont-Doherty to expand the exclusion zone for the mitigation airgun to 100 m (328 ft) in shallow water.

The 180- or 190-dB level shutdown criteria are applicable to cetaceans and pinnipeds respectively as specified by NMFS (2000). Lamont-Doherty used these levels to establish the exclusion zones as presented in their application.

Lamont-Doherty used a process to develop and confirm the conservativeness of the mitigation radii for a shallow-water seismic survey in the northeast Pacific Ocean offshore Washington in 2012. Crone *et al.* (2014) analyzed the received sound levels from the 2012 survey and reported that the actual distances to received levels that would constitute the exclusion and buffer zones were two to three times smaller than what Lamont-Doherty's modeling approach had predicted. While these results confirm the role that bathymetry plays in propagation, they also confirm that empirical measurements from the Gulf of Mexico survey likely over-estimated the size of the exclusion zones for the 2012 Washington shallow-water seismic surveys. NMFS reviewed this preliminary information in consideration of how these data reflect on the accuracy of Lamont-Doherty's current modeling approach and we have concluded that the modeling of RMS distances likely results in predicted distances to acoustic thresholds (Table 3) that are conservative, *i.e.*, if actual distances to received sound levels deviate from distances predicted via modeling, actual distances are expected to be lesser, not greater, than predicted distances

Power-Down Procedures

A power down involves decreasing the number of airguns in use such that the radius of the 180-dB or 190-dB exclusion zone is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, the *Langseth* would operate one airgun (40 in³). The continued operation of one airgun would alert marine mammals to the presence of the seismic vessel in the area. A shutdown occurs when the *Langseth* suspends all airgun activity.

If the observer detects a marine mammal outside the exclusion zone and the animal is likely to enter the zone, the crew would power down the airguns to reduce the size of the 180-dB or 190-dB exclusion zone before the animal enters that zone. Likewise, if a mammal is already within the zone after detection, the crew would power-down the airguns immediately. During a power down of the airgun array, the crew would operate a single 40-in³ airgun which has a smaller exclusion zone. If the observer detects a marine mammal within or near the smaller exclusion zone around the airgun (Table 3), the crew would shut down the single airgun (see next section).

Resuming Airgun Operations After a Power Down

Following a power-down, the *Langseth* crew would not resume full airgun activity until the marine mammal has cleared the 180-dB or 190-dB exclusion zone. The observers would consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone; or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (*i.e.*, small odontocetes or pinnipeds), or 30 minutes for species with longer dive durations (*i.e.*, mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales); or

The *Langseth* crew would resume operating the airguns at full power after 15 minutes of sighting any species with short dive durations (*i.e.*, small odontocetes or pinnipeds). Likewise, the crew would resume airgun operations at full power after 30 minutes of sighting any species with longer dive durations (*i.e.*, mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales).

NMFS estimates that the *Langseth* would transit outside the original 180-dB or 190-dB exclusion zone after an 8-minute wait period. This period is based on the average speed of the *Langseth* while operating the airguns (8.5 km/h; 5.3 mph). Because the vessel has transited away from the vicinity of the original sighting during the 8-minute period, implementing ramp-up procedures for the full array after an extended power down (*i.e.*, transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The *Langseth's* observers are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, observers can observe to the horizon (10 km; 6.2 mi) from the height of the *Langseth's* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

Shutdown Procedures

The *Langseth* crew would shut down the operating airgun(s) if they see a marine mammal within or approaching the exclusion zone for the single airgun. The crew would implement a shutdown:

(1) If an animal enters the exclusion zone of the single airgun after the crew has initiated a power down; or

(2) If an observer sees the animal is initially within the exclusion zone of the single airgun when more than one airgun (typically the full airgun array) is operating.

Resuming Airgun Operations After a Shutdown

Following a shutdown in excess of eight minutes, the *Langseth* crew would initiate a ramp-up with the smallest airgun in the array (40-in³). The crew would turn on additional airguns in a sequence such that the source level of the array would increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the observers would monitor the exclusion zone, and if he/she sees a marine mammal, the *Langseth* crew would implement a power down or shutdown as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew would need to temporarily shut down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew would follow ramp-up procedures for a shutdown described earlier and the observers would monitor the full exclusion zone and would implement a power down or shutdown if necessary.

If the full exclusion zone is not visible to the observer for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew would not commence ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew would not ramp up the airgun array from a complete shutdown at night or in thick fog, because the outer part of the zone for that array would not be visible during those conditions.

If one airgun has operated during a power down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. The vessel's crew would not initiate a ramp-up of the airguns if an observer sees the marine mammal within or near the applicable exclusion zones during the day or close to the vessel at night.

Ramp-Up Procedures

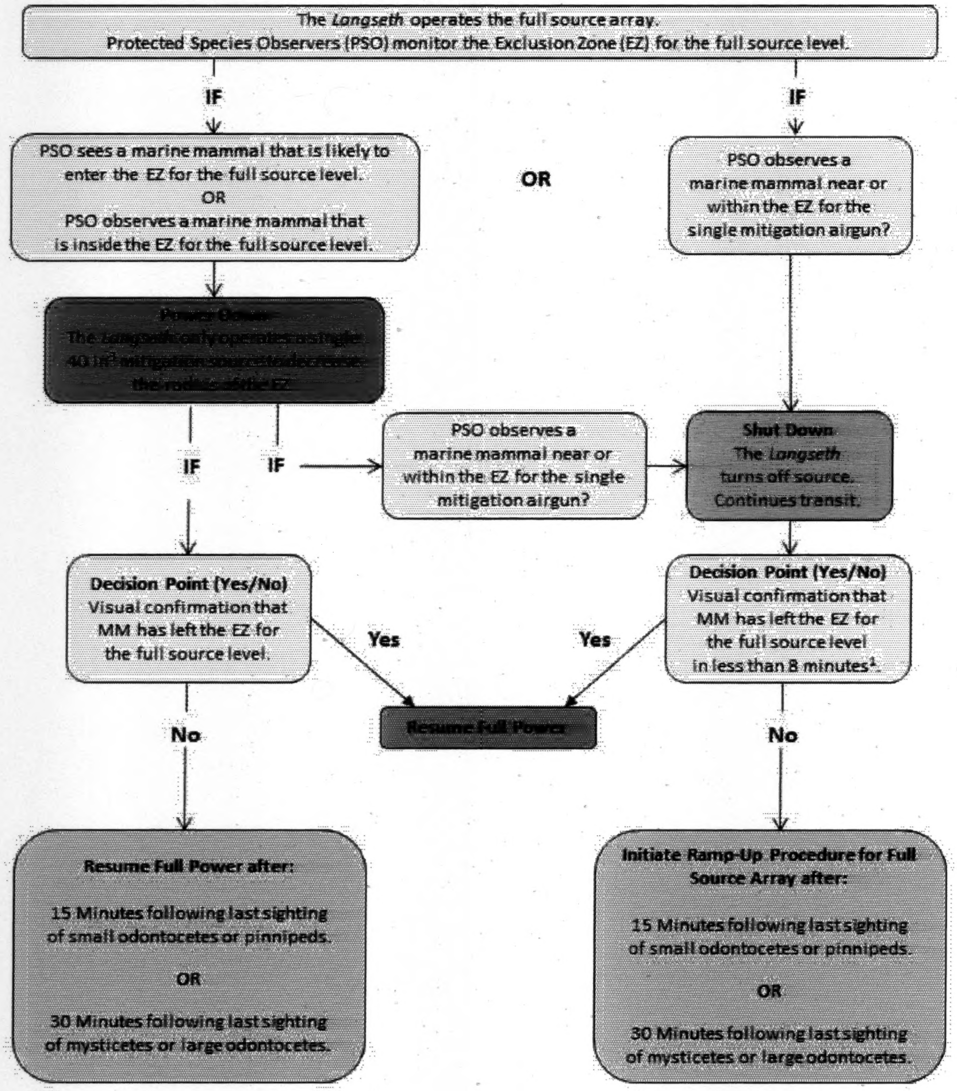
Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to "warn" marine mammals in the vicinity of the airguns, and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. Lamont-Doherty would follow a ramp-up procedure when the airgun array begins operating after an 8 minute period without airgun operations or when shut down has exceeded that period. Lamont-Doherty has used similar waiting periods (approximately eight to 10 minutes) during previous seismic surveys.

Ramp-up would begin with the smallest airgun in the array (40 in^3). The crew would add airguns in a sequence such that the source level of the array would increase in steps not exceeding six dB per five minute period over a total duration of approximately 30 to 35 minutes. During ramp-up, the observers would monitor the exclusion zone, and if marine mammals are sighted, Lamont-Doherty would implement a power-down or shut-down as though the full airgun array were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, Lamont-Doherty would not commence the ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the crew would not ramp up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array would not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals would be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. Lamont-Doherty would not initiate a ramp-up of the airguns if an observer sights a marine mammal within or near the applicable exclusion zones. NMFS refers the reader to Figure 2, which presents a flowchart representing the ramp-up, power down, and shut down protocols described in this notice.

Figure 2—Ramp-Up, Power Down, and Shut-Down Procedures for the Langseth

Current Power-Down and Shut-Down Procedures for the R/V *Langseth*


The Langseth operates the full source array.
Protected Species Observers (PSO) monitor the Exclusion Zone (EZ) for the full source level.
IF
IF
PSO sees a marine mammal that is likely to enter the EZ for the full source level.
OR
PSO observes a marine mammal that is inside the EZ for the full source level.
OR
PSO observes a marine mammal near or within the EZ for the single mitigation airgun?
Power Down
The Langseth only operates a single 40 in³ mitigation source to decrease the radius of the EZ.
IF
IF
PSO observes a marine mammal near or within the EZ for the single mitigation airgun?
Shut Down
The Langseth turns off source. Continues transit.
Decision Point (Yes/No)
Visual confirmation that MM has left the EZ for the full source level.
Yes
Yes
Decision Point (Yes/No)
Visual confirmation that MM has left the EZ for the full source level in less than 8 minutes¹.
Resume Full Power
No
No
Resume Full Power after:
15 Minutes following last sighting of small odontocetes or pinnipeds.
OR
30 Minutes following last sighting of mysticetes or large odontocetes.
Initiate Ramp-Up Procedure for Full Source Array after:
15 Minutes following last sighting of small odontocetes or pinnipeds.
OR
30 Minutes following last sighting of mysticetes or large odontocetes.

[1] Ramp-Up Procedures
For a given survey, Lamont-Doherty would calculate a specified period based on the 180-dB exclusion zone radius in relation to the average planned speed of the *Langseth* while surveying . Lamont-Doherty has used similar periods (8-10 minutes) for previous surveys. Ramp up will not occur if a marine mammal or sea turtle has not cleared the exclusion zone for the full array.

Date: November 2015

Special Procedures for Concentrations of Large Whales

The *Langseth* would avoid exposing concentrations of large whales to sounds greater than 160 dB re: 1 μPa within the 160-dB zone and would power down the array, if necessary. For purposes of this proposed survey, a concentration or group of whales would consist of six or more individuals visually sighted that do not appear to be traveling (*e.g.,* feeding, socializing, etc.).

Speed and Course Alterations

If during seismic data collection, Lamont-Doherty detects marine mammals outside the exclusion zone and, based on the animal's position and direction of travel, is likely to enter the exclusion zone, the *Langseth* would change speed and/or direction if this does not compromise operational safety. Due to the limited maneuverability of the primary survey vessel, altering speed, and/or course can result in an extended period of time to realign the *Langseth* to the transect line. However, if the animal(s) appear likely to enter the exclusion zone, the *Langseth* would undertake further mitigation actions, including a power down or shut down of the airguns.

Mitigation Conclusions

NMFS has carefully evaluated Lamont-Doherty's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of Lamont-Doherty's proposed measures, as well as other measures proposed by NMFS (*i.e.*, special procedures for concentrations of large whales), NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring

In order to issue an Incidental Harassment Authorization for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for Authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that we expect to be present in the proposed action area.

Lamont-Doherty submitted a marine mammal monitoring plan in section XIII of the Authorization application. NMFS, NSF, or Lamont-Doherty may modify or supplement the plan based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and during other times and locations, in order to generate more data to contribute to the analyses mentioned later;
2. An increase in our understanding of how many marine mammals would be affected by seismic airguns and other active acoustic sources and the likelihood of associating those exposures with specific adverse effects, such as behavioral harassment, temporary or permanent threshold shift;
3. An increase in our understanding of how marine mammals respond to stimuli that we expect to result in take and how those anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:
    a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (*i.e.*, to be able to accurately predict received level, distance from source, and other pertinent information);
    b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (*i.e.*, to be able to accurately predict received level, distance from source, and other pertinent information);
    c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;
4. An increased knowledge of the affected species; and
5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

Lamont-Doherty proposes to conduct marine mammal monitoring during the proposed project to supplement the proposed mitigation measures that include real-time monitoring (see "Vessel-based Visual Mitigation Monitoring" above), and to satisfy the monitoring requirements of the Authorization. Lamont-Doherty understands that NMFS would review the monitoring plan and may require refinements to the plan.

Vessel-Based Passive Acoustic Monitoring

Passive acoustic monitoring would complement the visual mitigation monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Passive acoustic monitoring can improve detection, identification, and localization of cetaceans when used in conjunction with visual observations. The passive acoustic monitoring would serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The acoustic observer would monitor the system in real time so that he/she can advise the visual observers if they acoustically detect cetaceans.

The passive acoustic monitoring system consists of hardware (*i.e.*, hydrophones) and software. The "wet end" of the system consists of a towed hydrophone array connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long and the hydrophones are fitted in the last 10 m (32.8 ft) of cable. A depth gauge, attached to the free end of the cable, typically towed at depths less than 20 m (65.6 ft). The *Langseth* crew would deploy the array from a winch located on the back deck. A deck cable would connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system would be located. The Pamguard software amplifies, digitizes, and then processes the acoustic signals received by the hydrophones. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

One acoustic observer, an expert bioacoustician with primary responsibility for the passive acoustic monitoring system would be aboard the *Langseth* in addition to the other visual observers who would rotate monitoring duties. The acoustic observer would monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, passive acoustic monitoring may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary passive acoustic monitoring streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One acoustic observer would monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The observer monitoring the acoustical data would be on shift for one to six hours at a time. The other observers would rotate as an acoustic observer, although the expert acoustician would be on passive acoustic monitoring duty more frequently.

When the acoustic observer detects a vocalization while visual observations are in progress, the acoustic observer on duty would contact the visual observer immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), so that the vessel's crew can initiate a power down or shutdown, if required. The observer would enter the information regarding the call into a database. Data entry would include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (*e.g.*, unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.*, clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. Acousticians record the acoustic detection for further analysis.

Observer Data and Documentation

Observers would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. They would use the data to help better understand the impacts of the activity on marine mammals and to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the exclusion zone.

When an observer makes a sighting, they will record the following information:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.*, none, avoidance, approach, paralleling, etc.), and behavioral pace.
2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.
3. The observer will record the data listed under (2) at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.
4. Observers will record all observations and power downs or shutdowns in a standardized format and will enter data into an electronic database. The observers will verify the accuracy of the data entry by computerized data validity checks during data entry and by subsequent manual checking of the database. These procedures will allow the preparation of initial summaries of data during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shutdown).
2. Information needed to estimate the number of marine mammals potentially taken by harassment, which Lamont-Doherty must report to the Office of Protected Resources.
3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where Lamont-Doherty would conduct the seismic study.
4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.
5. Data on the behavior and movement patterns of marine mammals detected during non-active and active seismic operations.

Proposed Reporting

Lamont-Doherty would submit a report to us and to NSF within 90 days after the end of the cruise. The report would describe the operations conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that occurred above the harassment threshold based on the observations.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), Lamont-Doherty shall immediately cease the specified activities and immediately report the take to the Chief Permits and Conservation Division, Office of Protected Resources, NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Lamont-Doherty shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with Lamont-Doherty to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Lamont-Doherty may not resume their activities until notified by us via letter, email, or telephone.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), Lamont-Doherty will immediately report the incident to the Chief Permits and Conservation Division, Office of Protected Resources, NMFS. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with Lamont-Doherty to determine whether modifications in the activities are appropriate.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Lamont-Doherty would report the incident to the Chief Permits and Conservation Division, Office of Protected Resources, NMFS, within 24 hours of the discovery. Lamont-Doherty would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Acoustic stimuli (*i.e.*, increased underwater sound) generated during the operation of the airgun array may have the potential to result in the behavioral disturbance of some marine mammals and may have an even smaller potential to result in permanent threshold shift (non-lethal injury) of some marine mammals. NMFS expects that the proposed mitigation and monitoring measures would minimize the possibility of injurious or lethal takes. However, NMFS cannot discount the possibility (albeit small) that exposure to sound from the proposed survey could result in non-lethal injury (Level A harassment). Thus, NMFS proposes to authorize take by Level B harassment and Level A harassment resulting from the operation of the sound sources for the proposed seismic survey based upon the current acoustic exposure criteria shown in Table 4, subject to the limitations in take described in Tables 5–8 later in this notice.

TABLE 4—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS), (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).

NMFS' practice is to apply the 160 dB re: 1 μPa received level threshold for underwater impulse sound levels to predict whether behavioral disturbance that rises to the level of Level B harassment is likely to occur. NMFS' practice is to apply the 180 dB or 190 dB re: 1 μPa (for cetaceans and pinnipeds, respectively) received level threshold for underwater impulse sound levels to predict whether permanent threshold shift (auditory injury), which we consider as harassment (Level A), is likely to occur.

Acknowledging Uncertainties in Estimating Take

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice for us to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. We use this information to predict how many animals potentially could be taken. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, distinguishing between the numbers of individuals harassed and the instances of harassment can be difficult to parse. Moreover, when one considers the duration of the activity, in the absence of information to predict the degree to which individual animals are likely exposed repeatedly on subsequent days, one assumption is that entirely new animals could be exposed every day, which results in a take estimate that in some circumstances overestimates the number of individuals harassed.

The following sections describe Lamont-Doherty and NMFS' methods to estimate take by incidental harassment. We base these estimates on the number of marine mammals that are estimated to be exposed to seismic airgun sound levels above the Level B harassment threshold of 160 dB during a total of approximately 9,633 km (5,986 mi) of transect lines in the southeast Pacific Ocean.

Density Estimates: Lamont-Doherty was unable to identify any systematic aircraft- or ship-based surveys conducted for marine mammals in waters of the southeast Pacific Ocean offshore Chile. Lamont-Doherty used densities from NMFS' Southwest Fisheries Science Center (SWFSC) cruises (Ferguson and Barlow, 2001, 2003; Barlow 2003, 2010; Forney, 2007) in the California Current which is similar to the Humboldt Current Coastal area in which the proposed surveys are located. Both are eastern boundary currents that feature narrow continental shelves, upwelling, high productivity, and fluctuating fishery resources (sardines and anchovies). The densities used were survey effort-weighted means for the locations (blocks or states). In cases where multiple density estimates existed for an area, Lamont-Doherty used the highest density range (summer/fall) for each species within the survey area. We refer the reader to Lamont-Doherty's application for detailed information on how Lamont-Doherty calculated densities for marine mammals from the SWFSC cruises.

For blue whales in the southern survey area, NMFS used the density (9.56/km^2) reported by Galletti Vernazzani *et al.* (2012) for approximately four days of the proposed southern survey to account for potential survey operations occurring near a known foraging area between 39° S. and 44° S. For the remaining 31 days of the proposed survey, NMFS used the density estimate presented in Lamont-Doherty's application (2.07/km^2). NMFS considers Lamont-Doherty's approach to calculating densities for the remaining marine mammal species in the survey areas as the best available information. We present the estimated densities (when available) in Tables 5, 6, and 7 in this notice.

Modeled Number of Instances of Exposures: Lamont-Doherty would conduct the proposed seismic surveys offshore Chile in the southeast Pacific Ocean and presents estimates of the anticipated numbers of instances that marine mammals could be exposed to sound levels greater than or equal to 160, 180, and 190 dB re: 1 μPa during the proposed seismic survey in Tables 3, 4, and 5 in their application. NMFS has independently reviewed these estimates and presents revised estimates (described in the following subsections) of the anticipated numbers of instances that marine mammals could be exposed to sound levels greater than or equal to 160, 180, and 190 dB re: 1 μPa during the proposed seismic survey in Tables 5, 6, and 7 in this notice. Table 8 presents the total numbers of instances of take that NMFS proposes to authorize.

Take Estimate Method for Species with Density Information: Briefly, we take the estimated density of marine mammals within an area (animals/km^2) and multiply that number by the daily ensonified area (km^2). The product (rounded) is the number of instance of take within one day. We then multiply the number of instances of take within one day by the number of survey days (plus 25 percent contingency). The result is an estimate of the potential number of instances that marine mammals could be exposed to airgun sounds above the Level B harassment threshold (*i.e.,* the 160 dB ensonified area minus the 180/190-dB ensonified area) and the Level A harassment threshold (*i.e.,* the 180/190-dB ensonified area only) over the duration of each proposed survey.

There is some uncertainty about the representativeness of the estimated density data and the assumptions used in their calculations. Oceanographic conditions, including occasional El Niño and La Niña events, influence the distribution and numbers of marine mammals present in the eastern tropical Pacific Ocean, resulting in considerable year-to-year variation in the distribution and abundance of many marine mammal species. Thus, for some species, the densities derived from past surveys may not be representative of the densities that would be encountered during the proposed seismic surveys. However, the approach used is based on the best available data.

In many cases, this estimate of instances of exposures is likely an overestimate of the number of individuals that are taken, because it assumes 100 percent turnover in the area every day, (*i.e.,* that each new day results in takes of entirely new individuals with no repeat takes of the same individuals over the three periods (northern: 35 days; central: 6 days; and southern: 34 days) including contingency. It is difficult to quantify to what degree this method overestimates the number of individuals potentially taken. Except as described later for a few specific species, NMFS uses this number of instances as the estimate of individuals (and authorized take).

Take Estimates for Species with Less than One Instance of Exposure: Using the approach described earlier, the model generated instances of take for some species that were less than one over the 75 total survey days. Those species include: Bryde's, dwarf sperm, killer, and sei whale. NMFS used data based on dedicated survey sighting information from the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, and 2013 (AMAPPS, 2010, 2011, 2013) to estimate take and assumed that Lamont-Doherty could potentially encounter one group of each species during the proposed seismic survey. NMFS believes it is reasonable to use the average (mean) group size (weighted by effort and rounded up) from the AMMAPS surveys for Bryde's whale (2), dwarf sperm whale (2), killer whale (4), and sei whale (3) to derive a reasonable estimate of take for eruptive occurrences of each these species only once for each survey.

Take Estimates for Species with No Density Information: Density information for the southern right whale, pygmy right whale, Antarctic minke whale, sei whale, dwarf sperm whale, Shephard's beaked whale, pygmy beaked whale, southern bottlenose whale, hourglass dolphin, pygmy killer whale, false killer whale; short-finned pilot whale, Juan Fernandez fur seal, and southern elephant seal in the southeast Pacific Ocean is data poor or non-existent. When density estimates were not available for a particular survey leg, NMFS used data based on dedicated survey sighting information from the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, and 2013 (AMAPPS, 2010, 2011, 2013) and from Santora (2012) to estimate mean group size and take for these species. NMFS assumed that Lamont-Doherty could potentially encounter one group of each species each day during the seismic survey. NMFS believes it is reasonable to use the average (mean) group size (weighted by effort and rounded up) for each species multiplied by the number of survey days to derive an estimate of take from potential encounters.

TABLE 5—DENSITIES OF MARINE MAMMALS AND ESTIMATES OF INCIDENTS OF EXPOSURE TO ≥160 AND 180 OR 190 dB re 1 µPa rms PREDICTED DURING THE NORTHERN PROPOSED SEISMIC SURVEY IN THE SOUTHEAST PACIFIC OCEAN IN 2016/2017

Species	Density estimate [1]	Modeled number of instances of exposures to sound levels ≥160, 180, and 190 dB [2]	Proposed Level A take [3]	Proposed Level B take
Southern right whale	0	105, 0, -	0	105
Humpback whale	0.32	35, 0, -	0	35
Common (dwarf) minke whale	0.34	35, 0 -	0	35
Antarctic minke whale	0	70, 0, -	0	70
Bryde's whale	0.47	35, 0, 0	0	35
Sei whale	0	105, 0, -	0	105
Fin whale	1.4	105, 35, -	35	105
Blue whale	0.54	35, 0, -	0	35
Sperm whale	1.19	70, 0, -	0	70
Dwarf sperm whale	8.92	630, 105, -	105	630
Pygmy sperm whale	2.73	210, 35, -	35	210
Cuvier's beaked whale	2.36	175, 35, -	35	175
Pygmy beaked whale	0.7	35, 0, -	0	35
Gray's beaked whale	1.95	140, 35, -	35	140
Blainville's beaked whale	1.95	140, 35, -	35	140
Rough-toothed dolphin	7.05	490, 105, -	105	490
Common bottlenose dolphin	18.4	1,330, 245, -	245	1,330
Striped dolphin	61.4	4,410, 805, -	805	4,410
Short-beaked common dolphin	356.3	25,515, 4,725, -	4,725	25,515
Long-beaked common dolphin	50.3	3,605, 665, -	665	3,605
Dusky dolphin	13.7	980, 175, -	175	980
Southern right whale dolphin	3.34	245, 35, -	35	245
Risso's dolphin	29.8	2,135, 385, -	385	2,135
Pygmy killer whale	1.31	105, 0, -	0	105
False killer whale	0.63	35, 0, -	0	35
Killer whale	0.23	4, 0, -	0	4
Short-finned pilot whale	0	700, 0, -	0	700
Long-finned pilot whale	1.09	70, 0, -	0	70
Burmeister's porpoise	5.15	385, 70, -	70	385
Juan Fernandez fur seal	0	70, -, 0	0	70
South American fur seal	37.9	2,730, -, 490	490	2,730
South American sea lion	393	28,140, -, 5,215	5,215	28,140

[1] Densities shown (when available) are 1,000 animals per km². See Lamont-Doherty's application and text in this notice for a summary of how Lamont-Doherty derived density estimates for certain species. For species without density estimates, see text in this notice for an explanation of NMFS' methodology to derive take estimates.

[2] Take modeled using a daily method for calculating ensonified area: Estimated density multiplied by the daily ensonified area to derive instances of take in one day (rounded) multiplied by the number of survey days with 25 percent contingency (35) Level B take = modeled instances of exposure within the 160-dB ensonified area minus the 180-dB or 190-dB ensonified area. Level A take = modeled instances of exposures within the 180-dB or 190-dB ensonified area only. Modeled instances of exposures include adjustments for species with no density information or with species having less than one instance of exposure (see text for sources).

[3] The Level A estimates are overestimates of predicted impacts to marine mammals as the estimates do not take into consideration the required mitigation measures for shutdowns or power downs if a marine mammal is likely to enter the 180 or 190 dB exclusion zone while the airguns are active.

TABLE 6—DENSITIES OF MARINE MAMMALS AND ESTIMATES OF INCIDENTS OF EXPOSURE TO ≥160 AND 180 OR 190 dB re 1 µPa rms PREDICTED DURING THE CENTRAL PROPOSED SEISMIC SURVEY IN THE SOUTHEAST PACIFIC OCEAN IN 2016/2017

Species	Density estimate [1]	Modeled number of instances of exposures to sound levels ≥160, 180, and 190 dB [2]	Proposed Level A take [3]	Proposed Level B take
Southern right whale	0	18, 0, -	0	18
Pygmy right whale	0	18, 0, -	0	18
Humpback whale	0.43	6, 0, -	0	6
Common (dwarf) minke whale	0.34	6, 0, -	0	6
Antarctic minke whale	0	12, 0, -	0	12
Bryde's whale	0.41	6, 0, -	0	6
Sei whale	0	18, 0, -	0	18
Fin whale	1.96	18, 6, -	6	18
Blue whale	2.1	18, 6, -	6	18
Sperm whale	1.22	12, 0, -	0	12

TABLE 6—DENSITIES OF MARINE MAMMALS AND ESTIMATES OF INCIDENTS OF EXPOSURE TO ≥160 AND 180 OR 190 dB re 1 µPa rms PREDICTED DURING THE CENTRAL PROPOSED SEISMIC SURVEY IN THE SOUTHEAST PACIFIC OCEAN IN 2016/2017—Continued

Species	Density estimate [1]	Modeled number of instances of exposures to sound levels ≥160, 180, and 190 dB [2]	Proposed Level A take [3]	Proposed Level B take
Dwarf sperm whale	7.98	78, 12, -	12	78
Pygmy sperm whale	2.98	30, 6, -	6	30
Cuvier's beaked whale	3.02	30, 6, -	6	30
Shepard's beaked whale	0	18, 0, -	0	18
Hector's beaked whale	1.54	18, 0, -	0	18
Pygmy beaked whale	0.55	6, 0, -	0	6
Gray's beaked whale	1.54	18, 0, -	0	18
Blainville's beaked whale	1.54	18, 0, -	0	18
Andrew's beaked whale	1.54	18, 0, -	0	18
Strap-toothed beaked whale	1.54	18, 0, -	0	18
Spade-toothed beaked whale	1.54	18, 0, -	0	18
Chilean dolphin	21.2	210, 36, -	36	210
Common bottlenose dolphin	12.3	120, 24, -	24	120
Striped dolphin	46.7	462, 84, -	84	462
Short-beaked common dolphin	503.5	4,998, 908, -	906	4,998
Dusky dolphin	14.8	144, 24, -	24	144
Peale's dolphin	21.2	210, 36, -	36	210
Hourglass dolphin	0	30, 0, -	0	30
Southern right whale dolphin	6.07	60, 12, -	12	60
Risso's dolphin	21.2	210, 36, -	36	210
Pygmy killer whale	0	12, 0, -	0	12
False killer whale	0.54	6, 0, -	0	6
Killer whale	0.28	4, 0, -	0	4
Short-finned pilot whale	0	120, 0, -	0	120
Long-finned pilot whale	0.94	12, 0, -	0	12
Burmeister's porpoise	4.92	48, 6, -	6	48
Juan Fernandez fur seal	0	12, -, 0	0	12
South American fur seal	37.9	378, -, 66	66	378
South American sea lion	393	3,900, -, 708	708	3,900
Southern elephant seal	0	24, -, 0	0	24

[1] Densities shown (when available) are 1,000 animals per km². See Lamont-Doherty's application and text in this notice for a summary of how Lamont-Doherty derived density estimates for certain species. For species without density estimates, see text in this notice for an explanation of NMFS' methodology to derive take estimates.

[2] Take modeled using a daily method for calculating ensonified area: Estimated density multiplied by the daily ensonified area to derive instances of take in one day (rounded) multiplied by the number of survey days with 25 percent contingency (35) Level B take = modeled instances of exposure within the 160-dB ensonified area minus the 180-dB or 190-dB ensonified area. Level A take = modeled instances of exposures within the 180-dB or 190-dB ensonified area only. Modeled instances of exposures include adjustments for species with no density information or with species having less than one instance of exposure (see text for sources).

[3] The Level A estimates are overestimates of predicted impacts to marine mammals as the estimates do not take into consideration the required mitigation measures for shutdowns or power downs if a marine mammal is likely to enter the 180 or 190 dB exclusion zone while the airguns are active.

TABLE 7—DENSITIES OF MARINE MAMMALS AND ESTIMATES OF INCIDENTS OF EXPOSURE TO ≥160 AND 180 OR 190 dB re 1 µPa rms PREDICTED DURING THE SOUTHERN PROPOSED SEISMIC SURVEY IN THE SOUTHEAST PACIFIC OCEAN IN 2016/2017

Species	Density estimate [1]	Modeled number of instances of exposures to sound levels ≥160, 180, and 190 dB [2]	Proposed Level A take [3]	Proposed Level B take
Southern right whale	0	102, 0, -	0	102
Pygmy right whale	0	102, 0, -	0	102
Humpback whale	1.22	102, 0, -	0	102
Common (dwarf) minke whale	0.61	34, 0, -	0	34
Antarctic minke whale	0	68, 0, -	0	68
Bryde's whale	0.03	2, 0, -	0	2
Sei whale	0.02	3, 0, -	0	3
Fin whale	2.43	170, 34, -	34	170
Blue whale (Feb–Apr)	9.56	80, 12, -	12	80
Blue whale (May–Jan)	2.07	124, 31, -	31	124
Sperm whale	1.32	102, 0, -	0	102
Dwarf sperm whale	0	68, 0, -	0	68
Pygmy sperm whale	4.14	306, 34, -	34	306
Cuvier's beaked whale	4.02	272, 34, -	34	272

TABLE 7—DENSITIES OF MARINE MAMMALS AND ESTIMATES OF INCIDENTS OF EXPOSURE TO ≥160 AND 180 OR 190 dB re 1 µPa rms PREDICTED DURING THE SOUTHERN PROPOSED SEISMIC SURVEY IN THE SOUTHEAST PACIFIC OCEAN IN 2016/2017—Continued

Species	Density estimate [1]	Modeled number of instances of exposures to sound levels ≥160, 180, and 190 dB [2]	Proposed Level A take [3]	Proposed Level B take
Shepard's beaked whale	0	102, 0, -	0	102
Hector's beaked whale	0.31	34, 0, -	0	34
Pygmy beaked whale	0	102, 0, -	0	102
Gray's beaked whale	1.95	136, 34, -	34	136
Blainville's beaked whale	0.31	34, 0, -	0	34
Andrew's beaked whale	0.31	34, 0, -	0	34
Strap-toothed beaked whale	0.31	34, 0, -	0	34
Spade-toothed beaked whale	0.31	34, 0, -	0	34
Southern bottlenose whale	0	102, 0, -	0	102
Chilean dolphin	10.9	748, 136, 0	136	748
Common bottlenose dolphin	2.72	204, 34, -	34	204
Striped dolphin	17.7	1,224, 204, -	204	1,224
Short-beaked common dolphin	516.9	36,210, 5,950, -	5,950	36,210
Dusky dolphin	29.9	2,108, 340, -	340	2,108
Peale's dolphin	10.9	748, 136, -	136	748
Hourglass dolphin	0	170, 0, -	0	170
Southern right whale dolphin	9.79	680, 102, -	102	680
Risso's dolphin	10.9	748, 136, -	136	748
Pygmy killer whale	0	68, 0, -	0	68
False killer whale	0	238, 0, -	0	238
Killer whale	0.73	68, 0, -	0	68
Short-finned pilot whale	0	680, 0, -	0	680
Long-finned pilot whale	0.53	34, 0, -	0	34
Burmeister's porpoise	55.4	3,876, 646, -	646	3,876
Juan Fernandez fur seal	0	68, -, 0	0	68
South American fur seal	37.9	2,652, -, 442	442	2,652
South American sea lion	393	27,540, -, 4,522	4,522	27,540
Southern elephant seal	0	136, -, 0	0	136

[1] Densities shown (when available) are 1,000 animals per km^2. See Lamont-Doherty's application and text in this notice for a summary of how Lamont-Doherty derived density estimates for certain species. For species without density estimates, see text in this notice for an explanation of NMFS' methodology to derive take estimates.

[2] Take modeled using a daily method for calculating ensonified area: Estimated density multiplied by the daily ensonified area to derive instances of take in one day (rounded) multiplied by the number of survey days with 25 percent contingency (35) Level B take = modeled instances of exposure within the 160-dB ensonified area minus the 180-dB or 190-dB ensonified area. Level A take = modeled instances of exposures within the 180-dB or 190-dB ensonified area only. Modeled instances of exposures include adjustments for species with no density information or with species having less than one instance of exposure (see text for sources).

[3] The Level A estimates are overestimates of predicted impacts to marine mammals as the estimates do not take into consideration the required mitigation measures for shutdowns or power downs if a marine mammal is likely to enter the 180 or 190 dB exclusion zone while the airguns are active.

TABLE 8—TAKE ESTIMATES BASED ON TOTAL PREDICTED INCIDENTS OF EXPOSURE TO ≥160 AND 180 OR 190 dB re 1 µPa rms DURING THE NORTHERN, CENTRAL, AND SOUTHERN PROPOSED SEISMIC SURVEY OFF CHILE IN THE SOUTHEAST PACIFIC OCEAN IN 2016/2017

Species	Proposed Level A take [1]	Proposed Level B take	Total proposed take	Percent of population [2]
Southern right whale	0	225	225	1.875
Pygmy right whale	0	120	120	Unknown
Humpback whale	0	143	143	0.340
Common (dwarf) minke whale	0	75	75	0.015
Antarctic minke whale	0	41	41	0.008
Bryde's whale	0	43	43	0.099
Sei whale	0	126	126	1.260
Fin whale	75	293	368	1.673
Blue whale	49	257	306	3.060
Sperm whale	0	184	184	0.051
Dwarf sperm whale	117	776	893	0.524
Pygmy sperm whale	75	546	621	0.365
Cuvier's beaked whale	75	477	552	2.760
Shepard's beaked whale	0	120	120	0.474
Pygmy beaked whale	0	143	143	0.565
Gray's beaked whale	69	294	363	1.435
Blainville's beaked whale	35	192	227	0.897
Hector's beaked whale	0	52	52	0.206
Gray's beaked whale	69	294	363	1.435

TABLE 8—TAKE ESTIMATES BASED ON TOTAL PREDICTED INCIDENTS OF EXPOSURE TO ≥160 AND 180 OR 190 dB re 1 µPa rms DURING THE NORTHERN, CENTRAL, AND SOUTHERN PROPOSED SEISMIC SURVEY OFF CHILE IN THE SOUTHEAST PACIFIC OCEAN IN 2016/2017—Continued

Species	Proposed Level A take[1]	Proposed Level B take	Total proposed take	Percent of population[2]
Andrew's beaked whale	0	52	52	0.206
Strap-toothed beaked whale	0	52	52	0.206
Spade-toothed beaked whale	0	52	52	0.206
Southern bottlenose whale	0	102	102	0.142
Chilean dolphin	172	958	1,130	11.300
Rough-toothed dolphin	105	490	595	0.553
Common bottlenose dolphin	303	1,654	1,957	0.583
Striped dolphin	1,093	6,096	7,189	0.745
Short-beaked common dolphin	11,581	66,723	78,304	4.433
Long-beaked common dolphin	665	3,605	4,270	2.965
Dusky dolphin	539	3,232	3,771	14.571
Peale's dolphin	172	958	1,130	Unknown
Hourglass dolphin	0	200	200	0.139
Southern right whale dolphin	149	985	1,134	Unknown
Risso's dolphin	557	3,093	3,650	3.304
Pygmy killer whale	0	185	185	0.476
False killer whale	0	279	279	0.701
Killer whale	0	76	76	0.152
Short-finned pilot whale	0	1,500	1,500	0.255
Long-finned pilot whale	0	116	116	0.058
Burmeister's porpoise	722	4,309	5,031	Unknown
Juan Fernandez fur seal	0	150	150	0.465
South American fur seal	998	5,760	6,758	2.703
South American sea lion	10,445	59,580	70,025	17.604
Southern elephant seal	0	160	160	0.040

[1] The Level A estimates are overestimates of predicted impacts to marine mammals as the estimates do not take into consideration the required mitigation measures for shutdowns or power downs if a marine mammal is likely to enter the 180 or 190 dB exclusion zone while the airguns are active.

[2] Proposed authorized Level A and B takes (used by NMFS as proxy for number of individuals exposed) expressed as the percent of the population listed in Table 1 in this notice. Unknown = Abundance size not available.

Lamont-Doherty did not estimate any additional take from sound sources other than airguns. NMFS does not expect the sound levels produced by the echosounder and sub-bottom profiler to exceed the sound levels produced by the airguns.

As described above, NMFS considers the probability for entanglement of marine mammals to be so low as to be discountable, because of the vessel speed and the monitoring efforts onboard the survey vessel. Therefore, NMFS does not propose to authorize additional takes for entanglement.

As described above, the *Langseth* will operate at a relatively slow speed (typically 4.6 knots [8.5 km/h; 5.3 mph]) when conducting the survey. Protected species observers would monitor for marine mammals, which would trigger mitigation measures, including vessel avoidance where safe. Therefore, NMFS does not anticipate nor do we propose to authorize takes of marine mammals as a result of vessel strike.

There is no evidence that the planned survey activities could result in serious injury or mortality within the specified geographic area for the requested proposed Authorization. The required mitigation and monitoring measures would minimize any potential risk for serious injury or mortality.

Preliminary Analysis and Determinations

Negligible Impact

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

In making a negligible impact determination, NMFS considers:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of harassment; and
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental takes.

To avoid repetition, our analysis applies to all the species listed in Table 8, given that NMFS expects the anticipated effects of the seismic airguns to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

Given the required mitigation and related monitoring, NMFS does not anticipate that serious injury or mortality would occur as a result of Lamont-Doherty's proposed seismic survey in the southeast Pacific Ocean. Thus the proposed authorization does not authorize any mortality. NMFS' predicted estimates for Level A harassment take for some species are likely overestimates of the injury that will occur, as NMFS expects that successful implementation of the proposed mitigation measures would avoid Level A take in some instances. Also, NMFS expects that some individuals would avoid the source at levels expected to result in injury, given sufficient notice of the *Langseth's* approach due to the vessel's relatively low speed when conducting seismic surveys. Though NMFS expects that Level A harassment is unlikely to occur at the numbers proposed to be authorized, is difficult to quantify the degree to which the mitigation and avoidance will reduce the number of animals that might incur PTS, therefore we propose to authorize, and have included in our analyses, the modeled number of Level A takes, which does not take the mitigation or avoidance into consideration. However, because of the constant movement of the *Langseth* and of the animals, as well as the fact that the vessel is not expected to remain in any one area in which individuals would be expected to concentrate for any extended amount of time (*i.e.,* since the duration of exposure to loud sounds will be relatively short), we anticipate that any PTS that may be incurred in marine mammals would be in the form of only a small degree of permanent threshold shift, and not total deafness, that would not be likely to affect the fitness of any individuals.

Of the marine mammal species under our jurisdiction that are known to occur or likely to occur in the study area, the following species are listed as endangered under the ESA: Blue, fin, humpback, sei, Southern right, and sperm whales. The other marine mammal species that may be taken by harassment during Lamont-Doherty's seismic survey program are not listed as threatened or endangered under the ESA.

Cetaceans. Odontocete reactions to seismic energy pulses are usually thought to be limited to shorter distances from the airgun(s) than are those of mysticetes, in part because odontocete low-frequency hearing is assumed to be less sensitive to the low frequency signals of these airguns than that of mysticetes. NMFS generally expects cetaceans to move away from a noise source that is annoying prior to its becoming potentially injurious, and this expectation is expected to hold true in the case of the proposed activities, especially given the relatively slow travel speed of the *Langseth* while seismic surveys are being conducted (4.5 kt; 5.1 mph). The relatively slow ship speed is expected to provide cetaceans with sufficient notice of the oncoming vessel and thus sufficient opportunity to avoid the seismic sound source before it reaches a level that would be potentially injurious to the animal. However, as described above, Level A takes for a small group of cetacean species are proposed for authorization here.

Potential impacts to marine mammal habitat were discussed previously in this document (see the "Anticipated Effects on Habitat" section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect the feeding success of any individuals long-term. Regarding direct effects on cetacean feeding, based on the fact that the action footprint does not include any areas recognized specifically for higher value feeding habitat, the mobile and ephemeral nature of most prey sources, and the size of the southeast Pacific Ocean where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area are expected to be minor based on the fact that other equally valuable feeding opportunities likely exist nearby.

Taking into account the planned mitigation measures, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." Animals are not expected to permanently abandon any area that is surveyed, and based on the best available information, any behaviors that are interrupted during the activity are expected to resume once the activity ceases. For example, as described above, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2014). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2014). The history of coexistence between seismic surveys and baleen whales suggests that brief exposures to sound pulses from any single seismic survey are unlikely to result in prolonged effects. Only a small portion of marine mammal habitat will be affected at any time, and other areas within the southeast Pacific Ocean would be available for necessary biological functions. Overall, the consequences of behavioral modification are not expected to affect cetacean growth, survival, and/or reproduction, and therefore are not expected to be biologically significant.

Pinnipeds. Generally speaking, pinnipeds may react to a sound source in a number of ways depending on their experience with the sound source and what activity they are engaged in at the time of the exposure, with behavioral responses to sound ranging from a mild orienting response, or a shifting of attention, to flight and panic. However, research and monitoring observations from activities similar to those proposed have shown that pinnipeds in the water are generally tolerant of anthropogenic noise and activity. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds and only slight (if any) changes in behavior (Harris *et al.,* 2001; Moulton and Lawson, 2002). During foraging trips, extralimital pinnipeds may not react at all to the sound from the proposed survey or may alert, ignore the stimulus, change their behavior, or avoid the immediate area by swimming away or diving. Behavioral effects to sound are generally more likely to occur at higher received levels (*i.e.,* within a few kilometers of a sound source). However, the slow speed of the *Langseth* while conducting seismic surveys (approximately 4.5 kt; 5.1 mph) is expected to provide ample opportunity for pinnipeds to avoid and keep some distance between themselves and the loudest sources of sound associated with the proposed activities. Additionally, underwater sound from the proposed survey would not be audible at pinniped haulouts or rookeries, therefore the consequences of behavioral responses in these areas are expected to be minimal. Overall, the consequences of behavioral modification are not expected to affect pinniped growth, survival, and/or reproduction, and therefore are not expected to be biologically significant.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.,* 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While NMFS anticipates that the seismic operations would occur on consecutive days, the estimated duration of the survey would last no more than 75 days but would increase sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of most of the marine mammals within the proposed survey area), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than a day.

For reasons stated previously in this document and based on the following factors, Lamont-Doherty's proposed activities are not likely to cause long-term behavioral disturbance, serious injury, or death, or other effects that would be expected to adversely affect reproduction or survival of any individuals. They include:

- The anticipated impacts of Lamont-Doherty's survey activities on marine mammals are temporary behavioral changes due, primarily, to avoidance of the area around the seismic vessel;
- The likelihood that, given the constant movement of boat and animals and the nature of the survey design (not concentrated in areas of high marine mammal concentration), any PTS that is incurred would be of a low level;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the operation of the airgun(s) to avoid acoustic harassment;
- The expectation that the seismic survey would have no more than a temporary and minimal adverse effect on any fish or invertebrate species that serve as prey species for marine mammals, and therefore consider the potential impacts to marine mammal habitat minimal.

Tables 5–8 in this document outlines the number of requested Level A and Level B harassment takes that we anticipate as a result of these activities.

Required mitigation measures, such as special shutdowns for large whales, vessel speed, course alteration, and visual monitoring would be implemented to help reduce impacts to marine mammals. Based on the analysis herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that Lamont-Doherty's proposed seismic survey would have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that Lamont-Doherty's activities could potentially affect, by Level B harassment, 44 species of marine mammals under our jurisdiction. NMFS estimates that Lamont-Doherty's activities could potentially affect, by Level A harassment, up to 26 species of marine mammals under our jurisdiction.

For each species, the numbers of take being proposed for authorization are small relative to the population sizes: Less than 18 percent for South American sea lion, less than 15 percent for the dusky dolphin, less than 11.5 percent for Chilean dolphin, and less than 5 percent for all other species (Table 8).

NMFS is not aware of reliable abundance estimates for four species of marine mammals (Burmeister's porpoise, Peale's dolphin, pygmy right whale, and southern right whale dolphin) for which incidental take authorization is proposed. Therefore we rely on the best available information on these species to make determinations as to whether the proposed authorized take numbers represent small numbers of the total populations of these species.

The Burmeister's porpoise is distributed from the Atlantic Ocean in southern Brazil to the Pacific Ocean in northern Peru (Reyes 2009). While there are no quantitative data on abundance, the best available information suggest the species is assumed to be numerous throughout South American coastal waters (Brownell Jr. and Clapham 1999), with groups estimated at approximately 150 individuals observed off of Peru (Van Waerebeek et al. 2002). In addition the species is typically found shoreward of the 60 m isobath (Hammond et al. 2012), suggesting that the proposed number of authorized takes is likely conservative as the species is unlikely to be encountered throughout the full survey area. The species' wide distribution and apparent abundance suggest the proposed number of authorized takes would represent a small number of individuals relative to the species' total abundance.

Peale's dolphin is a coastal species that is known to inhabit waters very near to shore, commonly within or shoreward of kelp beds, while in the waters of southern Chile and Tierra del Fuego they appear to prefer channels, fjords and deep bays (Goodall 2009). Their apparent habitat preference for waters very near to shore suggests that the number of proposed authorized takes is likely very conservative as the species is unlikely to be encountered throughout much of the survey area. While no abundance estimate exists for the species, Peale's dolphin is reportedly the most common cetacean found around the coast of the Falkland Islands and Chile (Brownell Jr. et al. 1999). The combination of the species' apparent abundance and the species' apparent preference for habitats that would not be surveyed by Lamont-Doherty suggests the proposed number of authorized takes would represent a small number of individuals relative to the species' total abundance.

The full distribution of the southern right whale dolphin is not known, but the species appears to be circumpolar and fairly common throughout its range. Survey data and stranding and fishery interaction data in northern Chile suggest that the species may be one of the most common cetaceans in the region (Van Waerebeek et al. 1991). The species' apparent abundance and its broad distribution suggest the proposed number of authorized takes would represent a small number of individuals relative to the species' total abundance.

The pygmy right whale has a circumpolar distribution, between about 30° and 55° S., with records from southern South America as well as Africa, Australia and New Zealand (Kemper 2009). There are no estimates of abundance for the species, but judging by the number of strandings in Australia and New Zealand, it is likely to be reasonably common in that region (Kemper 2009), with aggregations of up to approximately 80 individuals reported (Matsuoka 1996). The species' apparent abundance and its broad distribution suggest the proposed number of authorized takes would represent a small number of individuals relative to the species' total abundance.

NMFS finds that the proposed incidental take described in Table 8 for the proposed activity would be limited to small numbers relative to the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are six marine mammal species listed as endangered under the Endangered Species Act that may occur in the proposed survey area. Under section 7 of the ESA, NSF has initiated formal consultation with NMFS on the proposed seismic survey. NMFS (*i.e.*, National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) will also consult internally with NMFS on the proposed issuance of an Authorization under section 101(a)(5)(D) of the MMPA. NMFS and the NSF will conclude the consultation prior to a determination on the proposed issuance of the Authorization.

National Environmental Policy Act (NEPA)

NSF has prepared a draft environmental analysis titled, *Draft Environmental Analysis of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Southeast Pacific Ocean, 2016/2017.* NMFS has posted this document on our Web site concurrently with the publication of this notice. NMFS has independently evaluated the draft environmental analysis and has prepared a draft Environmental Assessment (DEA) titled, *Proposed Issuance of an Incidental Harassment Authorization to Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Southeast Pacific Ocean, 2016/2017.* Information in Lamont-Doherty's application, NSF's draft environmental analysis, NMFS' DEA and this notice collectively provide the environmental information related to proposed issuance of an Authorization for public review and comment. NMFS will review all comments submitted in response to this notice as we complete the NEPA process, including a decision of whether to sign a Finding of No Significant Impact (FONSI), prior to a final decision on the proposed Authorization request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes issuing an Authorization to Lamont-Doherty for conducting a seismic survey in the Southeast Pacific Ocean, between June 2016 and June 2017, provided they incorporate the proposed mitigation, monitoring, and reporting requirements.

Draft Proposed Authorization

This section contains the draft text for the proposed Authorization. NMFS proposes to include this language in the Authorization if issued.

Incidental Harassment Authorization

We hereby authorize the Lamont-Doherty Earth Observatory (Lamont-Doherty), Columbia University, P.O. Box 1000, 61 Route 9W, Palisades, New York 10964–8000, under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107, to incidentally harass small numbers of marine mammals incidental to a marine geophysical survey conducted by the R/V *Marcus G. Langseth* (*Langseth*) marine geophysical survey in the Southeast Pacific Ocean between June 2016 and June 2017.

1. Effective Dates

This Authorization is valid between June 2016 and June 2017.

2. Specified Geographic Region

This Authorization is valid only for specified activities associated with the R/V *Marcus G. Langseth's* (*Langseth*) seismic operations as specified in Lamont-Doherty's Incidental Harassment Authorization (Authorization) application and environmental analysis in the following specified geographic area:

a. In the Southeast Pacific Ocean, located approximately within the exclusive economic zone of Chile, between 18° and 44° S. as specified in Lamont-Doherty's application and the National Science Foundation's environmental analysis.

3. Species Authorized and Level of Takes

a. This authorization limits the incidental taking of marine mammals, by harassment only, to the species in the area described in Tables 5–8 in this notice.

i. During the seismic activities, if the Holder of this Authorization encounters any marine mammal species that are not listed in Condition 3(a) for authorized taking and are likely to be exposed to sound pressure levels greater than or equal to 160 decibels (dB) re: 1 μPa, then the Holder must alter speed or course or shut-down the airguns to avoid take.

b. The taking by serious injury or death of any of the species listed in Condition 3(a) or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

c. This Authorization limits the methods authorized for taking by harassment to the following acoustic sources:

i. A sub-airgun array with a total capacity of 6,600 in^3 (or smaller);

4. Reporting Prohibited Take

The Holder of this Authorization must report the taking of any marine mammal in a manner prohibited under this Authorization immediately to the Office of Protected Resources, National Marine Fisheries Service, at 301–427–8401 and/or by email to the Chief, Permits and Conservation Division.

5. Cooperation

We require the Holder of this Authorization to cooperate with the Office of Protected Resources, National Marine Fisheries Service, and any other Federal, state, or local agency monitoring the impacts of the activity on marine mammals.

6. Mitigation and Monitoring Requirements

We require the Holder of this Authorization to implement the following mitigation and monitoring requirements when conducting the specified activities to achieve the least practicable adverse impact on affected marine mammal species or stocks:

Visual Observers

a. Utilize two, National Marine Fisheries Service-qualified, vessel-based Protected Species Visual Observers (visual observers) to watch for and monitor marine mammals near the seismic source vessel during daytime airgun operations (from nautical twilight-dawn to nautical twilight-dusk) and before and during start-ups of airguns day or night.

i. At least one visual observer will be on watch during meal times and restroom breaks.

ii. Observer shifts will last no longer than four hours at a time.

iii. Visual observers will also conduct monitoring while the *Langseth* crew deploy and recover the airgun array and streamers from the water.

iv. When feasible, visual observers will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavioral reactions during, between, and after airgun operations.

v. The *Langseth's* vessel crew will also assist in detecting marine mammals, when practicable. Visual observers will have access to reticle binoculars (7x50 Fujinon), and big-eye binoculars (25x150).

Exclusion Zones

b. Establish a 180-decibel (dB) or 190-dB exclusion zone for cetaceans and pinnipeds, respectively, before starting the airgun subarray (6,660 in^3); and a 180-dB or 190-dB exclusion zone for cetaceans and pinnipeds, respectively for the single airgun (40 in^3). Observers will use the predicted radius distance for the 180-dB or 190-dB exclusion zones for cetaceans and pinnipeds.

Visual Monitoring at the Start of Airgun Operations

c. Monitor the entire extent of the exclusion zones for at least 30 minutes (day or night) prior to the ramp-up of airgun operations after a shutdown.

d. Delay airgun operations if the visual observer sees a cetacean within the 180-dB exclusion zone for cetaceans or 190-dB exclusion zone for pinnipeds until the marine mammal(s) has left the area.

i. If the visual observer sees a marine mammal that surfaces, then dives below the surface, the observer shall wait 30 minutes. If the observer sees no marine mammals during that time, he/she should assume that the animal has moved beyond the 180-dB exclusion zone for cetaceans or 190-dB exclusion zone for pinnipeds.

ii. If for any reason the visual observer cannot see the full 180-dB exclusion zone for cetaceans or the 190-dB exclusion zone for pinnipeds for the entire 30 minutes (*i.e.,* rough seas, fog, darkness), or if marine mammals are near, approaching, or within zone, the *Langseth* may not resume airgun operations.

iii. If one airgun is already running at a source level of at least 180 dB re: 1 μPa or 190 dB re: 1 μPa, the *Langseth* may start the second gun–and subsequent airguns–without observing relevant exclusion zones for 30 minutes, provided that the observers have not seen any marine mammals near the relevant exclusion zones (in accordance with Condition 6(b)).

Passive Acoustic Monitoring

e. Utilize the passive acoustic monitoring (PAM) system, to the maximum extent practicable, to detect and allow some localization of marine mammals around the *Langseth* during all airgun operations and during most periods when airguns are not operating. One visual observer and/or bioacoustician will monitor the PAM at all times in shifts no longer than 6 hours. A bioacoustician shall design and set up the PAM system and be present to operate or oversee PAM, and available when technical issues occur during the survey.

f. Do and record the following when an observer detects an animal by the PAM:

i. Notify the visual observer immediately of a vocalizing marine mammal so a power-down or shut-down can be initiated, if required;

ii. enter the information regarding the vocalization into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position, water depth when first detected, bearing if determinable, species or species group (*e.g.,* unidentified dolphin, sperm whale, monk seal), types and nature of sounds heard (*e.g.,* clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information.

Ramp-Up Procedures

g. Implement a "ramp-up" procedure when starting the airguns at the beginning of seismic operations or any time after the entire array has been shutdown, which means start the smallest gun first and add airguns in a sequence such that the source level of the array will increase in steps not exceeding approximately 6 dB per 5-minute period. During ramp-up, the observers will monitor the exclusion zone, and if marine mammals are sighted, a course/speed alteration, power-down, or shutdown will be implemented as though the full array were operational.

Recording Visual Detections

h. Visual observers must record the following information when they have sighted a marine mammal:

i. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

ii. Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or shut-down), Beaufort sea state and wind force, visibility, and sun glare; and

iii. The data listed under 6(f)(ii) at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

Speed or Course Alteration

i. Alter speed or course during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant exclusion zone. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the exclusion zone, the Holder of this Authorization will implement further mitigation measures, such as a shutdown.

Power-Down Procedures

j. Power down the airguns if a visual observer detects a marine mammal within, approaching, or entering the relevant exclusion zones. A power-down means reducing the number of operating airguns to a single operating 40 in^3 airgun. This would reduce the exclusion zone to the degree that the animal(s) is outside of it.

Resuming Airgun Operations After a Power-Down

k. Following a power-down, if the marine mammal approaches the smaller designated exclusion zone, the airguns must then be completely shut-down. Airgun activity will not resume until the observer has visually observed the marine mammal(s) exiting the exclusion zone and is not likely to return, or has not been seen within the exclusion zone for 15 minutes for species with shorter dive durations (small odontocetes) or 30 minutes for species with longer dive durations (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

l. Following a power-down and subsequent animal departure, the *Langseth* may resume airgun operations at full power. Initiation requires that the observers can effectively monitor the full exclusion zones described in Condition 6(b). If the observer sees a marine mammal within or about to enter the relevant zones then the *Langseth* will implement a course/speed alteration, power-down, or shutdown.

Shutdown Procedures

m. Shutdown the airgun(s) if a visual observer detects a marine mammal within, approaching, or entering the relevant exclusion zone. A shutdown means that the *Langseth* turns off all operating airguns.

Resuming Airgun Operations After a Shutdown

n. Following a shutdown, if the observer has visually confirmed that the animal has departed the 180-dB zone for cetaceans or the 190-dB zone for pinnipeds within a period of less than or equal to 8 minutes after the shutdown, then the *Langseth* may resume airgun operations at full power.

o. If the observer has not seen the animal depart the 180-dB zone for cetaceans or the 190-dB zone for pinnipeds, the *Langseth* shall not resume airgun activity until 15 minutes has passed for species with shorter dive times (*i.e.*, small odontocetes and pinnipeds) or 30 minutes has passed for species with longer dive durations (*i.e.*, mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales). The *Langseth* will follow the ramp-up procedures described in Conditions 6(g).

Survey Operations at Night

p. The *Langseth* may continue marine geophysical surveys into night and low-light hours if the Holder of the Authorization initiates these segment(s) of the survey when the observers can view and effectively monitor the full relevant exclusion zones.

q. This Authorization does not permit the Holder of this Authorization to initiate airgun array operations from a shut-down position at night or during low-light hours (such as in dense fog or heavy rain) when the visual observers cannot view and effectively monitor the full relevant exclusion zones.

Mitigation Airgun

s. The *Langseth* may operate a small-volume airgun (*i.e.*, mitigation airgun) during turns and maintenance at approximately one shot per minute. The *Langseth* would not operate the small-volume airgun for longer than three hours in duration during turns. During turns or brief transits between seismic tracklines, one airgun would continue to operate.

Special Procedures for Concentrations of Large Whales

t. The *Langseth* will power-down the array and avoid concentrations of large whales if possible (*i.e.*, avoid exposing concentrations of these animals to sounds greater than 160 dB re: 1 μPa). For purposes of the survey, a concentration or group of whales will consist of six or more individuals visually sighted that do not appear to be traveling (*e.g.*, feeding, socializing, etc.). The *Langseth* will follow the procedures described in Conditions 6(k) for resuming operations after a power down.

7. Reporting Requirements

This Authorization requires the Holder of this Authorization to:

a. Submit a draft report on all activities and monitoring results to the Office of Protected Resources, National Marine Fisheries Service, within 90 days of the completion of the *Langseth's* cruise. This report must contain and summarize the following information:

i. Dates, times, locations, heading, speed, weather, sea conditions (including Beaufort sea state and wind force), and associated activities during all seismic operations and marine mammal sightings.

ii. Species, number, location, distance from the vessel, and behavior of any marine mammals, as well as associated seismic activity (number of shutdowns), observed throughout all monitoring activities.

iii. An estimate of the number (by species) of marine mammals with known exposures to the seismic activity (based on visual observation) at received levels greater than or equal to 160 dB re: 1 μPa and/or 180 dB re 1 μPa for cetaceans and 190-dB re 1 μPa for pinnipeds and a discussion of any specific behaviors those individuals exhibited.

iv. An estimate of the number (by species) of marine mammals with estimated exposures (based on modeling results and accounting for animals at the surface but not detected [*i.e.*, g(0) values] and for animals present but underwater and not available for sighting [*i.e.*, f(0) values]) to the seismic activity at received levels greater than or equal to 160 dB re: 1 μPa and/or 180 dB re 1 μPa for cetaceans and 190-dB re 1 μPa for pinnipeds with a discussion of the nature of the probable consequences of that exposure on the individuals.

v. A description of the implementation and effectiveness of the: (A) Terms and conditions of the Biological Opinion's Incidental Take Statement (attached); and (B) mitigation measures of the Incidental Harassment Authorization. For the Biological Opinion, the report will confirm the implementation of each Term and Condition, as well as any conservation recommendations, and describe their effectiveness, for minimizing the adverse effects of the action on Endangered Species Act listed marine mammals.

b. Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, within 30 days after receiving comments from us on the draft report. If we decide that the draft report needs no comments, we will consider the draft report to be the final report.

8. Reporting Prohibited Take

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), Lamont-Doherty shall immediately cease the specified activities and immediately report the take to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Lamont-Doherty shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with Lamont-Doherty to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Lamont-Doherty may not resume their activities until notified by us via letter, email, or telephone.

9. Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Death

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), Lamont-Doherty will immediately report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with Lamont-Doherty to determine whether modifications in the activities are appropriate.

10. Reporting an Injured or Dead Marine Mammal Unrelated to the Activities

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Lamont-Doherty would report the incident to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email, within 24 hours of the discovery. Lamont-Doherty would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

11. Endangered Species Act Biological Opinion and Incidental Take Statement

Lamont-Doherty is required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to the Endangered Species Act Biological Opinion issued to the National Science Foundation and NMFS' Office of Protected Resources, Permits and Conservation Division. A copy of this Authorization and the Incidental Take Statement must be in the possession of all contractors and protected species observers operating under the authority of this Incidental Harassment Authorization.

Request for Public Comments

NMFS invites comments on our analysis, the draft authorization, and any other aspect of the Notice of proposed Authorization for Lamont-Doherty's activities. Please include any supporting data or literature citations with your comments to help inform our final decision on Lamont-Doherty's request for an application.

Dated: April 12, 2016.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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